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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 31st May, 1955

S.R.O. 1321.—Whereas the election of Shri Sheo Mahadev Prasad, as a member of the Legislative Assembly of the State of Bihar, from the Fatwa constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Devasharan Sinha, son of Babu Ramlukh Sinha, 4 Circular Road, Patna;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

ELECTION TRIBUNAL, PATNA.

PRESENT:—Shri Basu Prasad, Retired District Judge, *Chairman*.

Shri Hargobind Prasad Sinha, Retired District Judge, *Member*.

Shri Aditya Narain Lal, Advocate, *Member*.

ELECTION PETITION No 16 of 1953.

In the matter of bye-election to the Bihar State Legislative Assembly from Fatwa Constituency in the district of Patna.

Shri Devasharan Sinha, resident of Patna, *Petitioner*.

Versus

1. Shri Sheo Mahadev Prasad, resident of village Nathpore, District Patna.
2. Shri Ragho Singh, resident of village Surangpore, District Patna.
3. Shri Kesho Prasad, resident of village Purandarpur, Patna.
4. Shri Parmatma Singh, resident of village Masrahi, District Patna.
5. Shri Basudeo Singh, resident of village Hasanpur Khurd, District Patna.

6. Shri Manna Singh, resident of village Hajipur, District Patna.
7. Shri Ramasish Bhagat, resident of village Muksudpore, District Patna.
8. Shri Jugal Kishore Singh Yadav, resident of village Ariama, District Patna, Respondents.

For the Petitioner:—

1. Shri Rajkishore Prasad, Advocate.
2. Shri Ram Swaroop Sinha, Advocate.
3. Shri Tarni Prasad Mandal, Advocate.

For Respondent No. 1:—

1. Shri Kanahiya Prasad Verma, Advocate.

Shri Devasharan Sinha, who was a candidate for election to the Bihar State Legislative Assembly from Fatwa Constituency, has filed this petition under section 81 of the Representation of the People Act, 1951, for setting aside the election of respondent no. 1 at the bye-election held on 7th June, 1953.

There were 9 candidates, namely, the petitioner and the 8 respondents, at the bye-election. Respondents nos. 3 to 8 withdrew their candidatures; the petitioner and respondents nos. 1 and 2 contested the election. The petitioner was a Congress candidate; respondent no. 1, a Socialist candidate; and respondent no. 2, an independent candidate. The petitioner polled 15,511 votes whereas, respondents nos. 1 and 2 polled 15,995 votes and 510 votes respectively. Respondent no. 1, having secured the highest number of votes, was declared duly elected. The polls were held on 7th June 1953 and re-poll at one of the booths at Saidanpore was held on 11th June 1953. The counting was done on 12th June 1953 and the result declared the same day. The result of the election was published in the official Gazette dated 16th June 1953.

The petitioner challenges the election of respondent no. 1 on the grounds, (i) that the nomination of respondent no. 2 was improperly accepted and the result of the election had been materially affected by such improper acceptance of the nomination, and (ii) that certain corrupt practices had been committed by the polling agents of respondent no. 1 on or before the date of poll.

The petitioner states that, according to the declaration of respondent no. 2 in the nomination paper, one Shri Brajnandan Singh Yadav had been appointed as his election agent. He alleges that Form 5-A, whereby the election agent was to be appointed, was not filed along with the nomination paper and, therefore, the nomination of respondent no. 2 was invalid. He alleges further that Shri Brajnandan Singh Yadav was not, in fact, appointed as election agent of respondent no. 2 and he never accepted any such appointment. He contends that the provisions of Sections 40(1), Section 40(2) and Section 33(3) of the Representation of the People Act, 1951, were contravened. The petitioner also challenges the validity of the nomination of respondent no. 2 on another ground, namely, that the signatures of Proposer and Secunder on the nomination paper of respondent no. 2 are not genuine.

The petitioner, then alleges that, if the nomination of respondent no. 2 had been rejected, the votes obtained by him would have been cast in favour of the petitioner. It is urged by him that the result of the election has been materially affected by the improper acceptance of the nomination of respondent no. 2 and the election is, therefore, wholly void.

The petitioner, next, alleges that the election has not been a free election by reason of the fact that corrupt practices, as set forth in the List, annexed to the election petition and forming part of it, extensively prevailed at the election.

In the List, particulars of corrupt practices referred to in the election petition have been given. It is alleged that on 7th June 1953 Rambilas Singh, *alias* Chhotey Lal, of Gulmahiabag and Dwarika Singh of Moujipore, polling agents of respondent no. 1, carried voters from village Gulmahiabag to the polling booth at Moujipore in a truck, the number of which was given in a petition filed by Mr. Masud Alam, polling agent of the petitioner, before the presiding officer of Moujipore booth on the same day.

It is, then, alleged that on 7th June 1953 Ramdas Yadav of Singariawan, Deonandan Yadav of Kajibigha and Amrit Singh of Arai, polling agents of respondent

no. 1, carried voters from villages Kajibigha, Chakraja and Arai to Singariawan polling booths in bullock carts hired on payment on behalf of respondent no. 1.

It is, next, alleged that two leaflets, one bearing the heading "Hoshiar, Hoshiar, Hoshiar" (marked A) and another the heading "Harijan Bhai Congress Ko Vote Hargiz Nahin Denge" (marked B) and one booklet having the title "Jhopri, Bhokhi Janta Ab Na Sahegi, Dhan Aur Dharti Bat Ke Rahegi" (marked C) had been distributed on behalf of respondent no. 1; the contents of the leaflets and the booklet are false to the knowledge of respondent no. 1 and his agents and the same relate to the personal character and conduct of the petitioner. One copy each of the leaflets and the booklet were filed along with the election petition.

The petitioner stated that the first leaflet (marked A) was distributed by Bishundeo Tiwari of Dariapore at village Dariapore, and also by Gaurishankar Yadav of Nohta, Ramdas Yadav of Singariawan, Amrit Singh of Arai, Sonu Das of Chakraja, Rambilas Singh *alias* Chhotey Lal of Gulmahiabag, Mahendra Singh of Fatwa Bazar, Surendra Prasad Singh of Baraikalan, Ragho Yadav of Mohiud-din-pore, Brajnandan Singh of Narma and Kamleshwari Yadav of Bibipore in their respective villages. All the above named persons were polling agents of respondent no. 1 and the distribution was done on 1st to 6th June 1953.

The second leaflet (marked B) was distributed on 2nd June to 7th June, 1953 by the following polling agents of respondent no. 1 in their respective villages:—Kirpa Singh Yadav of Hajipore, Ramdas Yadav of Singariawan, Shiva Yadav of Kanchanpur, Manna Tiwari of Aslampore Khanpore (Narma), Parmanand Mishra of Dariapore, Sonu Das of Kajibigha, Surendra Prasad Singh of Baraikalan, and Alakh Singh of Saidanpore.

The booklet (marked C) was distributed by the following polling agents of respondents no. 1 in their respective villages on 29th May to 6th June, 1953:—Deonandan Yadav of Kajibigha, Amrit Singh of Arai, Sonu Das of Chakraja, Gauri Shankar Yadav of Nohta, Dwarika Singh of Moujipore, Rambilas Singh of Saidanpore, Mahendra Singh of Fatwa Bazar, Ram Prasad of Hajipore, Shiva Yadav of Kanchanpore, Brajnandan Singh of Narma, Parmanand Mishra of Dariapore, and Kamleshwari Yadav of Bibipore.

The election petition is resisted by respondent no. 1 who has filed a written statement contending that the petition is not maintainable in law and is not in accordance with the provisions of sections 80, 82, 83, 84 and 85 of the Representation of the People Act, 1951.

The respondent denies the petitioner's allegations that Shri Brajnandan Singh Yadav had not been appointed election agent of respondent no. 2 and had not accepted any such appointment. He also denies the allegation that respondent no. 2 did not file the Form 5-A along with his nomination paper. He further denies the allegation that the signatures of Proposer and Secunder on the nomination paper are not genuine. The respondent contends that the nomination of respondent no. 2 was valid and was rightly accepted by the Returning Officer. He does not accept the petitioner's statement that, if the nomination of respondent no. 2 had been refused, the votes obtained by him would have gone to the petitioner. He submits that respondent no. 2 was set up as a candidate, with the connivance of the petitioner, with a view to divide the votes of certain section of voters between respondent no. 1 and respondent no. 2. If respondent no. 2 had not been a candidate, the votes secured by him would have been cast in favour of respondent no. 1. It is contended by the respondent that the result of the election has not been materially affected by the alleged improper acceptance of the nomination of respondent no. 2.

It is then urged by the respondent that the statements made in the election petition including the list regarding the corrupt practices are vague, wrong, baseless and without foundation. The respondent or his agent or any of the persons named in the list never procured or used any truck or any other vehicle to convey voters to the polling station and no payment on behalf of the respondent was ever made for such purpose.

The respondent denies the distribution, by his workers or agents, of the leaflets and the booklet at the places and on the dates named, or at any other place or on any other date in course of the bye-election. He contends that some statements in the leaflets and the booklet refer to the Provincial Government and the Congress, and they all do not refer to the petitioner or his personal character or conduct. The respondent submits that the leaflets and the booklet have been manufactured by the petitioner for the purposes of this case.

Lastly, it is alleged by the respondent that, in any event, he took all reasonable means at his disposal for preventing the commission of corrupt or illegal practices at the election.

Respondent no. 7 has filed a separate written statement pleading that he has no knowledge about the allegations made in the election petition.

Respondent no. 2 has also filed a separate written statement. He substantially supports the defence of respondent no. 1 by alleging that he had appointed Brajnandan Singh Yadav as his election agent with the latter's (Brajnandan's) consent, that he had filed the Form 5-A along with the nomination paper, that the signatures of Proposer and Secondor on his nomination paper are genuine and that his nomination was rightly accepted. He also contends that the result of the election has not been materially affected by the alleged improper acceptance of his nomination. He says that no corrupt practice was committed by, or on behalf of, any candidate and that the election was a free and fair election.

It may be noted that respondents nos. 2 and 7 were not present at the hearing of the election petition.

The following issues were framed by the Tribunal.

ISSUES

1. Is the election petition maintainable in law?
2. Was the nomination of respondent no. 2 improperly accepted? If so, has the result of the election been materially affected by such acceptance?
3. Were truck and bullock carts procured or hired by agents of respondent no. 1 for carrying voters as alleged by the petitioner?
4. Were the leaflets and the booklet marked A, B, & C distributed by the agents of respondent no. 1? Were they directed against the petitioner and did they contain statements of facts which were false to the knowledge of respondent no. 1 and his agents?
5. Was the election not a free election by reason of the fact that corrupt practices extensively prevailed at the election as alleged by the petitioner?
6. Did respondent no. 1 take all reasonable means at his disposal for preventing the commission of corrupt or illegal practices at the election?
7. Is the election from the Fatwa Constituency wholly void?
8. Is the election of respondent no. 1 void?

FINDINGS

Issue no. 1.—It is contended by respondent no. 1 that the election petition is not maintainable in law because it is not in accordance with the provisions of sections 80, 82, 83, 84 and 85 of the Representation of the People Act, 1951.

Section 80 lays down that no election shall be called in question except by an election petition presented in accordance with the provisions of Part VI of the Act. The election petition in question has been presented in accordance with the provisions of Part VI.

Section 82 deals with the matter as to who shall be joined as respondents to the election petition. It has not been alleged that any person, who should have been joined as respondent, has been left out.

Section 84 mentions the various reliefs that may be claimed by the petitioner. In the present case, the petitioner claims, upon the allegations made in the election petition, the declaration that the election is wholly void and a further declaration that the election of respondent no. 1 (returned candidate) is void. The declarations claimed are in accordance with the provisions of section 84.

Section 85 empowers the Election Commission, to whom election petition is presented, to dismiss the petition if the provisions of certain sections are not complied with. This is not relevant in this case.

Section 83 deals with the contents of the election petition. Paragraph (1) of the section requires an election petition to give a concise statement of the material facts on which the petitioner relies. Paragraph (2) says that the petition shall be

accompanied by a list setting forth full particulars of any corrupt or illegal practice which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of the Commission of each such practice.

Mr. K. P. Varma has argued on behalf of the respondent that the election petition is defective in as much as it does not contain a concise statement of the material facts constituting the alleged corrupt practices, as required by section 83(1) of the Act. The only paragraph in the election petition, dealing with this matter, is paragraph no. 12. It is stated in that paragraph that corrupt practices prevailed at the election as set forth in the list, annexed to the election petition, which forms part of the petition. It has been pointed out that there is no concise statement of the material facts constituting the corrupt practice of hiring or procuring a truck or bullock carts for the conveyance of voters to the polling stations, as contemplated by section 123(6) of the Representation of the People Act, 1951. It has been also pointed out that, although there is some indication in that paragraph of the corrupt practice of distribution of leaflets and booklet containing false statements of fact, as contemplated by section 123(5) of the Act, there is no concise statement in that paragraph of all the material facts constituting the above corrupt practice.

The learned advocate for the petitioner has, on the other hand, argued that paragraph 12 of the election petition is to be read with paragraphs 1, 2, 3, 4 and 5 of the list, which forms part of the election petition. It, no doubt, appears that the material facts, on which the petitioner relies, are to be found in the list, read with paragraph 12 of the election petition.

Although we find that there is some defect in the pleadings of the petitioner in as much as there is absence of concise statement of material facts in paragraph 12 of the election petition, we consider that the defect is more or less of technical nature. The petitioner has clearly expressed that the list forms part of the election petition. That the list forms part of the pleadings cannot be seriously disputed. Paragraph (2) of section 83, which deals with the list, is under the heading "Contents of Petition". It has been held in 4 E. L. R. 401 at page 417 that the schedule (which is the same thing as the list) is a part of the pleadings. In another case, reported in the Gazette of India, extraordinary, dated 2nd December 1954, page 2361, it has been observed at page 2376 that the petition and the list have to be read as a whole and it would be difficult to lay down any particular standard of requirements for the contents of the election petition. In *Rai Bahadur Surendra Narayan Sinha versus Amulya Dhone Roy and others*, reported in *Indian Election Cases by Sen and Poddar, 1951 Edition*, page 188, a similar question arose for decision. Some material facts were not stated in the petition, but were stated in the list, giving particulars of the corrupt practices. It was held that the respondents were not misled by the technical errors of pleading and the petition could not fail on the preliminary ground that some material facts had not been stated in it. In the present case also, respondent no. 1, as will appear from his written statement, has not been misled or prejudiced in any manner by the above technical error in the pleadings of the petitioner. Copies of the election petition and the list were served together upon respondent no. 1, and he gave answer to the allegations, made in both the documents, in the written statement filed by him. It is also noteworthy that the respondent did not, at the early stage of the trial, file any petition for striking off paragraph 12 of the election petition and paragraphs 1 to 5 of the list on the ground that such concise statement was wanting in the election petition. On the other hand, a mass of evidence, both oral and documentary, has been adduced by each party on the issues relating to the corrupt practices. In the circumstances stated above, we have to read paragraph 12 of the election petition along with paragraphs 1 to 5 of the list.

This issue is, therefore, answered in the affirmative.

Issue No. 2.—The petitioner contends that the nomination of respondent No. 2 was improperly accepted by the Returning Officer. This contention is based upon two grounds, namely, (i) that the Form 5-A, appointing Brajnandan Singh Yadav as the election agent of respondent No. 2, was not, filed along with the nomination paper and, consequently, there was non-compliance with the provision of section 33(3) of the Representation of the People Act, 1951, and (ii) that the signatures of proposer and seconder on the nomination paper of respondent No. 2 are not genuine. It is urged that the Returning Officer ought to have refused the nomination on the grounds mentioned in clauses (d) and (e) of section 36(2) of the Act. The above section empowers the Returning Officer to refuse any nomination on the ground given in clause (d), namely, that there has been failure to comply with any of the provisions of section 33, or on the ground given in clause (e), namely, that the signature of any proposer or seconder is not genuine. There

are also other grounds given in clauses (a), (b) and (c) for rejecting the nomination, but they are not relevant in this case.

Every candidate is required to appoint in writing either himself or some other person to be his election agent [section 40(1) of the Representation of People Act, 1951]. When a candidate appoints some person other than himself to be his election agent, he has to obtain in writing the acceptance by such person of the office of such election agent [section 40(2) of the Act]. Such appointment is to be made in Form 5-A, as required under Rule 11-A of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951. Form 5-A embodies the terms of appointment of election agent and it is a kind of contract between the candidate and the election agent; it is to be signed by the candidate and also by the election agent showing his acceptance of the appointment.

The first question for consideration is, whether Brajnandan Singh was appointed election agent of respondent No. 2 by means of Form 5-A. From the evidence of Basudeo Singh (R.W. 31) and Narayan Singh (R.W. 42) it appears that Brajnandan Singh was appointed election agent by means of Form 5-A. But the Form showing such appointment is not on the record and there is no evidence that the form has been destroyed or is missing. In the absence of the form, it is difficult to hold, upon the mere statements of R.W. 31 and R.W. 42, that the appointment was made by means of Form 5-A. It may be noted that neither respondent No. 2 nor Brajnandan Singh has been examined on this point.

Respondent No. 2 had signed a declaration in his nomination papers, Exts. 1 and 1(a), that he had appointed Brajnandan Singh Yadav, resident of village Cheora, to be his election agent. This declaration furnishes some evidence regarding Brajnandan Singh being an election agent. Further, the evidence of Ramugi Singh (R.W. 33) and Moti Lal Singh (R.W. 62) shows that Brajnandan had worked as election agent of respondent No. 2. So we find that, although there is some evidence showing that Brajnandan Singh was election agent of respondent No. 2 and had acted as such, there is no satisfactory proof of the fact that he was appointed election agent by means of Form 5-A.

The parties in this case are at variance on the point, whether the Form 5-A had been filed along with the nomination papers of respondent No. 2. The petitioner (P.W. 1) says in his evidence that he had seen the nomination papers of respondent No. 2 on the date of scrutiny and he had noticed that the Form 5-A was wanting. The evidence of Narayan Singh (R.W. 42) and respondent No. 1 (R.W. 70), on the other hand, shows that the Form 5-A was filed along with the nomination papers. The Form 5-A is not to be found as an annexure to the nomination papers [Exts. 1 and 1(a)], nor is there any note in the order sheet of the Returning Officer (Ext. 2) mentioning that the Form 5-A was filed as such annexure. It is noteworthy that the order sheet (Ext. 2) does mention that a receipt showing necessary deposit by the candidate was filed as an annexure to the nomination papers. It is also noteworthy that in the order sheets relating to the nomination papers of the other candidates there is mention of the annexures filed along with the nomination papers [*vide* Exts. 2(a), 2(b), 2(c) and 2(d)]. It may, therefore, be assumed that, if the Form 5-A had been filed along with the nomination papers of respondent No. 2, it would have been mentioned in the order sheet (Ext. 2). It may also be noted that neither respondent No. 2 nor the Returning Officer has been examined as witness to prove that the Form 5-A had been actually filed along with the nomination papers. In these circumstances, we do not consider it safe to rely upon the evidence adduced on behalf of the respondent on this point, and we, therefore, find that the Form 5-A was not filed along with the nomination papers before the Returning Officer.

The next question for consideration is, whether the failure to file Form 5-A within the nomination paper amounts to failure to comply with the provisions of section 33(3) of the Act. Section 33(3) runs as follows:—

“Every nomination paper delivered under sub-section (1) shall be accompanied by a declaration in writing subscribed by the candidate that the candidate has appointed as his election agent for the election either himself or another person who is not disqualified under this Act for the appointment and who shall be named in the declaration, and by such other declarations if any, as may be prescribed: and no candidate shall be deemed to be duly nominated unless such declaration is, or all such declarations are, delivered along with the nomination paper”.

The section clearly provides that a nomination paper shall be accompanied (i) by a declaration regarding appointment of election agent and (ii) by such other

declaration as may be prescribed. So far as the first declaration is concerned, it is to be found in both the nomination papers [Exts. 1 and 1(a)]. Mr. Raj Kishore Prasad, appearing for the petitioner, has argued that the expression "such other declarations" in section 33(3) includes the Form 5-A, appointing Brajnandan Singh Yadav as election agent. We have examined this question with great care and we do not find ourselves in agreement with the views of Mr. Raj Kishore Prasad. It has been shown that there is any provision in the Act or the Rules, made under the Act, requiring that the Form 5-A shall be filled with the nomination paper. The Form of nomination paper is given in schedule II. It contains forms of four kinds of declarations. The last declaration is to be made by a candidate who is a member of any of the Scheduled castes or of any of the Scheduled Tribes. This declaration is provided for in paragraphs 2 and 3 as of sub-section (3) of Section 33 of the Act. We are not concerned with this declaration in this case. The first declaration is to be made by the candidate agreeing to his nomination. This declaration is contemplated by section 33(1) of the Act which provides, *inter alia* that a nomination paper is to be subscribed by the candidate himself as assenting to the nomination. In the second declaration, the candidate declares that he has appointed himself or some other person (to be named) to be his election agent. This declaration is specifically mentioned in section 33(3) of the Act. The third declaration relates to choice of symbols. This declaration has been prescribed by Rule 5 of the Representation of the People (Conduct of Elections and Election Petitiones) Rules, 1951. If the Legislature or the Rule making authority had considered that the Form 5-A was also a declaration within the meaning of section 33(3) a corresponding change would also have been made in the form of nomination paper, given in schedule 11. But no such change has been made.

Mr. Rajkshore Prasad has ingeniously argued, by reading the meaning of the word "declaration" as given in New Standard Dictionary, that the word "declaration" includes "appointment of election agent". We are not prepared to accept this argument. Declaration by a candidate regarding appointment of election agent is something quite distinct from appointment itself of election agent. By no stretch of imagination can it be said that the declaration and the appointment are one and the same thing. Further, the expression "such other declarations as may be prescribed", occurring in section 33(3) of the Act, mean only those declarations which are specifically prescribed by the Act or the Rules.

Mr. K. P. Varm, appearing for the respondent, has cited several cases(1) E.L.R. Page 211, 2 E.L.R. Page 301, 3 E.L.R. Page 102 and 6 E.L.R. Page 247) all of which support the view that the failure to file Form 5-A with the nomination paper does not amount to non-compliance with the requirement of section 33(3) of the Act and cannot therefore, invalidate the nomination. The petitioner, on the other hand, relies upon 7 E.L.R. Page 90 which supports his view that the Form 5-A must accompany the nomination paper. With great respect to the Judges, who decide that case, we differ from the observation made there, that the Form 5-A contains a declaration prescribed and, as such, it is a necessary document to accompany the nomination paper. We are clearly of the opinion that the Form 5-A refers to the act of appointment of election agent and is not a declaration by the candidate regarding such appointment.

A question has been raised that there is no document showing that Brajnandan Singh Yadav accepted his appointment as election agent. Such acceptance by election agent is provided for in section 40(2) of the Act and in Form 5-A. The Form 5-A not being on the record, it is difficult to hold that Brajnandan Singh Yadav accepted in writing, as required by law, his appointment as election agent. The respondent has adduced some evidence to prove that Brajnandan Singh himself wrote his name, his father's name and his residence in the declaration regarding appointment of election agent on the nomination papers [Exts. 1 and 1(a)] and he, thereby, signified his acceptance. We do not consider that this is sufficient to prove acceptance, in view of the requirement that the election agent has to sign the endorsement "I accept the above appointment" on the Form 5-A. There was, thus, non-compliance with the provision of section 40(2) of the Act. There was also non-compliance with the provision of Rule 11-A in as much as Brajnandan Singh was not appointed election agent by means of Form 5-A. But the non-compliance with the provision of section 40(2) or Rule 11-A cannot invalidate the nomination for the reason that such non-compliance is not contemplated by section 33(3) of the Act.

We, in conclusion, find that the non-filing of the Form 5-A with the nomination papers did not invalidate the nomination of respondent No. 2.

The second ground on which the nomination of respondent No. 2 is challenged is that the signatures of proposer and seconder on the nomination paper are not genuine. It has been stated above that respondent No. 2 filed two nomination papers. In one nomination paper (Ext. 1), Beni Singh is the proposer and Narayan Singh, the seconder. In the other nomination paper [Ext. 1(a)], Bulaki Das Paswan is the proposer and Ramnagina Prasad Singh, the seconder. Two witnesses only have been examined by the petitioner on this point. P.W. 1, who is the petitioner himself, has said in his evidence that the signatures of proposer and seconder on the two nomination papers of respondent No. 2 are not genuine. From his cross-examination it, however, appears that the above signatures were not written in his presence and that he had seen the nomination papers after they were filed before the Returning Officer, P.W. 1 is, therefore, not competent to say that the signatures are not genuine. The other witness on this point is Bulakan Das Paswan (P.W. 29), who is said to have signed as proposer on the nomination paper [Ext. 1(a)]. Bulakan Das Paswan has definitely stated in his evidence that he did not sign, as proposer, the nomination paper of Ragho Babu (Respondent No. 2). The signature against column No. 12 "signature of the proposer" of [Ext. 1(a)] being shown to him, he denied that the signature was his. The signature of the witness written by him at the end of his deposition as also the specimen signatures of the witness, written in court in presence of the members of the Tribunal and lawyers of both the parties, are remarkably different from the signature (marked X 1 for identification) on the nomination paper [Ext. 1(a)]. It may be mentioned that the specimen signatures of Bulakan Das Paswan were taken at the request of the respondent's advocate who submitted that he would take steps later for comparison of the signatures by a Handwriting Expert. But no such steps were taken and the respondent did not press the point. There is no good ground to discard the evidence of Bulakan Das and, in view of his evidence, we hold that the signature of the proposer on the nomination paper [Ext. 1(a)] is not genuine. The nomination paper [Ext. 1(a)] is, therefore, invalid.

The petitioner, however, cannot succeed on this ground unless he proves that the other nomination paper (Ext. 1) is also invalid because the signature of the proposer or the seconder thereon is also not genuine. There is no evidence on behalf of the petitioner showing that the signature of the proposer (Beni Singh) or the signature of the seconder (Narayan Singh) is not genuine. On the other hand, Narayan Singh (R.W. 42), who has been examined on behalf of the respondent, has definitely said in his evidence that he, as also Beni Singh, signed on the nomination paper. Column No. 13 of the nomination paper is intended for writing the name of the seconder and column No. 16, for the signature of the seconder. Narayan Singh, however, says that both the writings, in column No. 13 and column No. 16, are in his pen. Our attention has been invited to those writings which appear to be in the pen of two different persons. But the writing against the "signature column" is quite similar to the signature of Narayan Singh on his deposition written before the Tribunal. It seems to us that Narayan Singh, out of confusion, stated that the writing against the "name column" was also in his pen. The fact, however, remains that the writing in the "signature column" is in the pen of Narayan Singh. There is no specific evidence on behalf of the petitioner showing that the signature of Narayan Singh in column No. 16 of [Ext. 1] is not genuine. We, therefore, hold that the petitioner has failed to prove that the signature of the proposer or the seconder on the nomination paper (Ext. 1) is not genuine. The result, therefore, is that the nomination paper (Ext. 1) is a valid document in as much as the signatures of the proposer and the seconder thereon are genuine.

On the above findings, it must be held that the nomination of respondent No. 2 was not improperly accepted. The first part of this issue is, therefore, decided in favour of the respondent.

In view of the finding on the first part of this issue, it is not necessary to decide whether the result of the election has been materially affected by the alleged improper acceptance of the nomination of respondent No. 2.

Even assuming that the nomination of respondent No. 2 was improperly accepted, the petitioner cannot succeed unless he establishes by affirmative evidence that the result of the election has been materially affected of the improper acceptance of such nomination. The expression "the result of the election has been materially affected by the improper acceptance of the nomination of respondent No. 2" means that, if the nomination of respondent No. 2 had not been accepted, the result of the election would have been substantially different from what it was, or, in other words, respondent No. 1 would not have been returned, but a

different candidate would have succeeded at the election. It has been held by the Supreme Court that the result should not be judged by the mere increase or decrease in the total number of votes secured by the returned candidate, but by proof of the fact that the wasted votes would have been distributed in such a manner between the contesting candidates as would have brought about the defeat of the returned candidate (A.I.R. 1954 Supreme Court 513 at page 515).

In the present case, respondent No. 1 secured 15995 votes; whereas the petitioner secured 15,511 votes and respondent No. 2, 510 votes. Respondent No. 1, thus, defeated the petitioner by 484 votes. The difference between the votes secured by respondent No. 2 and the votes by which the petitioner has been defeated by respondent No. 1 is only 26. It, therefore, appears that 26 votes, out of 510 votes, are the deciding factor. If respondent No. 1 could get only 14 votes (which is more than half of 26) out of 510 votes polled by respondent No. 2, which may be called "wasted votes", the result of the election would not be materially affected. On the contrary, the petitioner, in order to succeed, has to show that he could get at least 498 votes (484+14) out of the aforesaid 510 votes. If the "wasted votes" had been distributed between the petitioner and respondent No. 1 in such a manner that the petitioner would have got 498 votes and respondent No. 1 only 12 votes, then in that case alone the petitioner would succeed. The petitioner has failed to prove that he could get at least 498 votes out of the "wasted" 510 votes. The statements of P.W. 15 and P.W. 25, that the votes cast in favour of respondent No. 2 would have gone to the petitioner if the former had not been a candidate, do not appear to be acceptable. On the other hand, from the evidence adduced by the respondent it can be safely concluded that respondent No. 1 would have surely got at least 14 votes out of the aforesaid 510 votes. Both respondent No. 1 and respondent No. 2 belong to the same caste and to the same thana. Both of them had been president of Fatwa Union Board at different times and both of them had influence over a certain section of voters. In these circumstances, it must be held that respondent No. 1 would have surely got at least 14 votes out of the votes polled by respondent No. 2, if the latter had not been a candidate.

It has been argued on behalf of the petitioner that, in this case, the "wasted" votes were not only 510 votes that had been polled by respondent No. 2, but also about 1000 votes more which had not been polled at all. It has been urged that about one thousand voters of different villages did not vote at all on account of confusion created by the propagandas of the petitioner and respondent No. 2, both of whom were claiming votes as Congress candidates. There is no such allegation in the election petition, although in paragraph 10 of the petition it is stated that, if the nomination of respondent No. 2 had been refused, the votes obtained by him would have been cast in favour of the petitioner. Several witnesses, namely P.W. 4, P.W. 6, P.W. 8, P.W. 9, P.W. 11, P.W. 17, P.W. 18, P.W. 21, P.W. 25, P.W. 28, P.W. 35, P.W. 45, P.W. 47, P.W. 57, P.W. 61, P.W. 62, P.W. 64, P.W. 68, P.W. 69, P.W. 80 and P.W. 83, have deposed on this point. The petitioner was a prominent Congress candidate and his symbol was "Yoked Bullocks", while respondent No. 2 was an independent candidate, his symbol being "Pitcher". From the evidence of the petitioner's own witness (P.W. 28) it appears that symbols of the candidates or their parties used to be announced at the time of propaganda among the voters. This is quite natural. There could not, therefore, be any room for confusion in the minds of voters as to which candidate represented which party. It is difficult to believe that respondent No. 2 was also claiming votes as a Congress candidate in fact of vigorous and extensive canvassing, that was being carried on, on behalf of the petitioner as such candidate. It has been suggested by respondent No. 1 that respondent No. 2 had been set up a candidate in order to divide the votes of Yadav voters between respondent No. 1 and respondent No. 2, both of whom happened to be Yadav by caste. It has been urged that this measure was adopted with a view to reduce to some extent the chances of respondent No. 1's success at the polls and, thereby, to benefit the petitioner. There is intrinsic evidence to support this suggestion. It appears that the Forms of Appointment of Polling Agents used by the petitioner and respondent No. 2 are of the same kind, they being cyclostyled forms (*vide* Exts. A series and M series). It also appears that the name of the petitioner was first written on the forms, Exts. M. series, but the name written was decaced by blackening it out and the name of respondent No. 2 written in its place. The forms of the petitioner were, thus, used by respondent No. 2. This fact clearly indicates that respondent No. 2 was in league with the petitioner. In the above circumstances, we cannot accept the statements of the petitioner's witnesses, that confusion was created in the minds of about 1000 voters who did not vote at all because respondent No. 2 also was claiming votes as a Congress candidate. We cannot hold that about 1000 votes more would have been polled by the petitioner if respondent No. 2 had not been a candidate.

We, therefore, find that the result of the election has not been materially affected by the alleged improper acceptance of the nomination of respondent No. 2.

This issue is, accordingly decided against the petitioner.

Issue No. 3.—Section 123(6) of the Representation of the People Act, 1951 provides that the hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person with the connivance of a candidate or his agent for the conveyance of any elector (other than the candidate himself, the member of his family or his agent) to or from any polling station shall be deemed to be a corrupt practice. Upon plain reading of the section, it appears that the corrupt practice consists in the hiring or procuring of any vehicle for the conveyance of any elector to or from any polling station. It seems to us that the Legislature has distinguished "procuring" from "hiring". When payment is made for use of any vehicle, it is "hiring". But when no payment is made, it is "procuring". The purpose for which the vehicle is hired or procured must be for the conveyance of an elector or electors. The petitioner, in order to succeed, has to prove not only the purpose, namely, conveyance of an elector or electors, but also the hiring or procuring which is the main ingredient of the corrupt practice. The purpose of hiring or procuring can be proved by various kinds of evidence, but the best and indisputable proof is by showing that the vehicle was found actually carrying a voter or voters to or from any polling station. In the present case, the petitioner alleges that the voters were actually carried to certain polling stations. Evidence has been adduced on this point. It will be discussed later whether the evidence is sufficient and reliable to prove the alleged conveyance of voters.

It has been, however, strenuously argued on behalf of the respondent that paragraph 1 of the list is entirely silent on the point whether the truck was hired or procured; it only speaks about carrying voters from village Gulmahiabag to mou-jipore polling booth. Paragraph 2 of the list speaks about carrying voters from certain villages to Singariawan polling booths in bullock carts, hired on payment. So, so far as bullock carts are concerned, the petitioner's case is that the carts were hired and voters were carried in them. But, so far as the truck is concerned, there is a great lacuna in the petitioner's pleadings. There is no allegation of either hiring or procuring; the only allegation is of carrying voters. The petitioner, in his evidence, has tried to make out a case of procuring of truck. The petitioner (P.W. 1) has stated in his examination in chief that the truck was procured, but from his cross-examination it appears that he has no personal knowledge of this fact and he learnt about the truck from his polling agent, Masud Alam. Masud Alam (P.W. 22) also has no personal knowledge about the procuring of the truck; he says that the owner of the truck; Badri Prasad, told him on inquiry that the truck had been lent. Badri Prasad (R.W. 37) has practically denied that he had lent his truck. He has said that his truck had not carried voters for respondent No. 1 on the date of bye-election. He has said further that his truck was out of order for one week, commencing from 5th June 1953 (that is 2 days before the date of the bye-election). There is, thus, on evidence worth the name to make out a case of procuring of truck.

The main ingredient of the corrupt practice, as observed above, is the hiring or procuring and it is necessary to state the date of hiring or procuring, the names of the persons alleged to have hired or procured, and other particulars required by section 83(2) of the Act. In support of this view, reference may be made to the case reported in 4 E.L.R. Page 380. The petitioner, here, gives the date of carrying voters and the names of the persons who carried the voters. This is not a compliance with the requirement of section 83(2). It may be that the date of carrying voters was the same as the date of hiring or procuring the truck and the persons who carried the voters were the same as those who hired or procured the truck. It is also possible that the date of hiring or procuring was different from the date of actually carrying the voters and the persons who hired or procured were different from those who actually carried the voters. So, it cannot be argued that the particulars of "hiring" or "procuring" a vehicle can be invariably gathered from the particulars of "carrying" voters in that vehicle.

It has been argued by Mr. R. S. Sinha on behalf of the petitioner that, when the petitioner alleged that voters were carried in a truck and no mention was made of hiring, it should be presumed that the petitioner meant that the truck was procured without any payment being made. We cannot accept this argument. It was necessary for the petitioner to state clearly in his pleadings whether the truck was hired or procured. Having failed to do so, he cannot succeed on this ground.

Before we discuss the evidence regarding this corrupt practice, we may observe that it is a settled principle that the standard of proof required in the matter of corrupt practices should be the same as that in the case of a criminal charge (See Election Cases, 1920—1935, by Hammond, Page 192; Indian Election Cases by Sen and Poddar, 1951 Edition, Page 526; 3 E.L.R. Page 488).

Let us, now, examine the evidence regarding conveyance of voters in the truck. Ram Bilas Singh, *alias* Chhotey Lal, of Gulmahiabag and Dwarika Singh of Mouji-pore, who are alleged to be polling agents of respondent No. 1, are said to have carried voters of Gulmahiabag to Mouji-pore polling station in a truck which belonged to one Badri Prasad of Alampore and which bore number B.R.A. 4327. It has been proved that the truck bearing the above number was owned by Badri of Alampore [*Vide* Exts. 4, 4(a), 5 and 5(a)]. Badri (R.W. 37) admits this fact.

On behalf of the petitioner, 7 witnesses, namely, P.W. 22 (Masud Alam), P.W. 40 (Mathura Prasad), P.W. 41 (Ram Lakhan Singh), P.W. 65 (Zahir Kasim), P.W. 67 (Bhagwan Singh), P.W. 76 (Kapildeo Singh) and P.W. 81 (Mohammad Ayub), have deposed on this point. None of these witnesses belongs to village Gulmahiabag from which voters are alleged to have been conveyed. Ram Lakhan Singh (P.W. 41), who belongs to village Sheikhpura and who was then living at Jethuli in connection with his brick kiln business there, says that he had gone to Gulmahiabag to take medicine for himself from Rambilas Singh, a Homoeopathic practitioner, in the morning of 7th June, 1953 when he saw the truck of Badri Babu in that village. He says further that he, Rambilas and 50 or 55 voters of Gulmahiabag came in the truck to Jethuli. When the truck arrived at Jethuli, Rambilas asked one Bhagwan to call Chulhai who was working in the brick kiln. After Chulhai boarded the truck, the witness got down from it. This is the story told by Ram Lakhan Singh. From the evidence of this witness it appears that Rambilas wrote out a prescription for him at Jethuli, although he remained with him at Gulmahiabag for half an hour. After getting the prescription at Jethuli, he had to go back again to Gulmahiabag to the doctor's dispensary for the medicine. His evidence further shows that there is a doctor at Jethuli also. We are not at all impressed with the story told by this witness and we think that the story has been invented for the purposes of this case.

Kapildeo Sinha (P.W. 76) is a pleader practising at Barh. He says that he had visited Gulmahiabag and certain other villages on 6th and 7th June, 1953 to do election work on behalf of the petitioner. When he visited Gulmahiabag in the morning of 7th June he saw the truck on the road. From his evidence it appears that he visited Gulmahiabag to request voters to vote for the Congress candidate and to distribute tickets among them. His statement that he visited Gulmahiabag for the second time in the morning of 7th June does not appear to be probable. It was rather late to do propaganda work and to distribute tickets among voters in the morning of 7th June, when the voters were expected to be leaving for the polling station. The witness had to admit that he did not remember the name of any of the voters whom he had approached. His evidence further shows that he left Gulmahiabag as soon as the truck started from that place. The evidence of this witness is not of convincing nature and cannot be relied upon.

Mathura Prasad (P.W. 40), who belongs to village Jalalpore and who is in service in the brick kiln at Jethuli, claims to have seen the truck when it had come to the brick kiln to pick up a voter, Chulhai. From the evidence of this witness it appears that the name of Chulhai is entered in the register maintained by him. The register, which would have been the best evidence to show that Chulhai was present in the brick kiln in the morning of 7th June, has not been produced. It does not seem probable that the truck moved to the brick kiln to pick up one voter, Chulhai. This witness as also Mohammad Ayub of Jethuli (P.W. 81) have said that the truck bore a Socialist flag. The workers of respondent No. 1, who were in the truck, were, surely, doing an illegal act and it is not expected that, instead of concealing their act, they should have advertised it by making a display of the Socialist flag. Mohammad Ayub is a co-villager of Masud Alam (P.W. 22), the polling agent of the petitioner, who as will be shown presently, filed a petition before the Presiding Officer making an allegation of voters being carried in truck. It seems that Mohammed Ayub has come forward to help Masud Alam in proving the allegation made by the latter.

Masud Alam (P.W. 22) says in his evidence that he saw the truck, B.R.A. 4327, arriving at Mouji-pore polling station at about 9-15 A.M. About 50 or 55 voters, who belonged to village Gulmahiabag, got down at a short distance from the polling booth and near the camp of respondent No. 1. Ram Bilas Singh, polling agent of respondent No. 1, had brought the voters in the truck. He got a petition [Ext.

3(b)], written by one Remeshwar Shastri M.L.A. signed it, and filed it before the Presiding Officer at about 11 A.M. after the truck had left the place. This is the story told by Masud Alam, Rameshwar Shastri M.L.A. has not been examined in this case and there is no satisfactory oral evidence to corroborate the statements of Masud Alam. The evidence of P.W. 65 and P.W. 67, who have also deposed about the arrival of the truck at Moujipore polling station, is, as will be shown later, far from being satisfactory. It is, indeed, surprising that Masud Alam did not file the petition [Ext. 3(b)] as soon as the truck arrived there on while the truck was standing at the polling station. The evidence of Masud Alam shows that the truck stopped at the polling station for 20 or 25 minutes and then left the place and did not return again. When a corrupt practice of such a grave nature was being committed, one would expect that the agents or workers of the petitioner should have taken prompt action in the matter by approaching the Presiding Officer and the police officers, who were on duty there, so that the truck could have been easily seized or at least its presence there would have been put beyond all reasonable doubt. But it is surprising that no such action was taken. From the evidence of Masud Alam it appears that all the voters, who came in the truck, belonged to Gulmahiabag and the truck performed one trip only. But the petition, which is said to have been filed after the truck left the polling station, recites that voters from Gulmahiabag and other villages are being brought. The recital is not consistent with the oral evidence. The evidence of P.W. 22 does not appear to be reliable and convincing.

Zahir Kasim (P.W. 65), who belongs to Patna, says that he had visited Moujipore at about 9-30 A.M. on 7th June, 1953, to supervise the election work on behalf of the Congress candidate when he saw voters getting down from a truck. He admits that no one had specifically asked him to supervise the election work. So, his presence at Moujipore is not free from doubt, specially when his evidence shows that he stopped there for half an hour only. Bhagwan Singh (P.W. 67), who belongs to village Ekauna, which is 18 or 20 miles from Gulmahiabag, also claims to have seen the truck arriving at Moujipore. From the evidence of this witness it appears that, while he was going to Fatwa to work in the bye-election, he stopped for some time at Moujipore which lay on the way. He admits that he had no work to do at Moujipore and so his story, that he stopped at Moujipore, is also not free from doubt. From the evidence of this witness it also appears that he was going to work in the bye-election of his own accord. This does not seem to be probable. The witness has also said that the truck bore a Socialist flag. This story, as discussed above, does not appear to be believable.

The Presiding Officer of Moujipore polling booth (P.W. 70) has supported the statement of P.W. 22 regarding the filing of the petition, Ext. 3(b), at 11 A.M. This witness submitted two reports, Exts. 6 and 7, to the Returning Officer on the polling at Moujipore polling booth. The reports also show that the polling agent of the petitioner filed a petition before him in the matter of the truck. It is, however, significant that the Presiding Officer did not himself see the truck. He clearly stated this fact in his evidence and reports. If a truck loaded with voters had really come to the polling booth, the notice of the Presiding Officer must have been immediately drawn to this fact and he must have noted the fact in his reports. P.W. 70, however, says in his evidence that, at about 11-30 A.M. when some voters were coming to vote, Masud Alam, polling agent of the petitioner, pointed out to him that those voters had come in a truck. He further says that he made inquiry from 5 or 6 voters who told him that they had come in a truck. The presiding Officer has named two such voters, Mosomat Ram Kuar Devi and Mosomat Tani Devi, in his report, Ext. 6. The statements of Ram Kuar Devi and Tani Devi do not appear to have been recorded by the Presiding Officer. So, in the absence of any such recorded statement, it is difficult to say what Ram Kuar and Tani had actually stated. Ram Kuar and Tani have not been examined in this case. On the contrary, Rameshwar Singh (R.W. 8), son of Tani Devi, has deposed that his mother, accompanied by him, had gone to the polling booth on foot. Tani Devi was not examined by the respondent as, according to R.W. 8, she was seriously ill. The evidence and reports of the Presiding Officer are not, in our opinion, of any material help to the petitioner.

There are certain circumstances which are against the petitioner. Gulmahiabag was only $1\frac{1}{2}$ miles away from Moujipore polling booth. It is not likely that the voters of that village, who are supposed to walk on foot such a short distance, should have been conveyed to the polling booth in a truck. It has not been shown that those voters were suffering from any such physical disability as to make employment of a truck necessary to carry them to the polling station. At any rate, it appears from the evidence that those voters had to return home on foot as the truck left the polling station soon after dropping them there. The truck is said

to have arrived at the polling station at about 9-15 A.M., i.e., in the early hours of the polling day. So, there was no reason to be in a hurry. It is not that the polling was to close soon and so a truck was engaged to save time in the journey. According to the evidence of the petitioner, Mahtab Lal (R.W. 6), Sitab Lal (R.W.) 7, Bhagwan Sahay (R.W. 10) and Ram Bilas (R.W. 17) were the prominent persons who are said to have travelled by the truck. But they have all denied this fact. Mahtab Lal has gone further and said that on the date of the poll he was not present in his village (Gulmahiabag), but was lying seriously ill at Patna. The statement of Mahtab Lal is supported by the evidence of Dr. Ramgobind Singh (R.W. 36), who was treating him during his illness, and the certificate (Ext. F) granted by him. The marked copy of the Electoral Roll [Ext. C(29)] in respect of Gulmahiabag shows that Mahtab Lal, whose serial number is 161, did not cast his vote. If Mahtab Lal had really gone to the polling booth in the truck, there was no reason why he should not have cast his vote, specially when the evidence shows that he is not only a relation of respondent No. 1 but is also greatly interested in him.

Besides the aforesaid witnesses, examined by the respondent. Badrinath (R.W. 37), the admitted owner of the truck, and Deoki Rai (R.W. 39), the driver of the truck, have deposed on this point. Their evidence shows that the truck was out of order and undergoing repairs on the date when it is said to have been employed for carrying voters. Their statements are corroborated by the following documents, namely, estimate of repair dated 5th June 1953 (Ext. N), receipt bearing the same date showing payment of Rs. 100 as advance (Ext. N1) and bill dated 12th June, 1953 for the repairs of the truck (Ext. O). Respondent No. 1 has also examined several other witnesses to prove that no truck had brought voters to Moujipore polling booth. Hulas Rai (R.W. 16), a worker of Ragho Singh (Respondent No. 2), who was at Moujipore polling station from 7 a.m. to 5 p.m. that day, Udit Prasad (R.W. 48), polling agent of respondent No. 1 at Moujipore and Ramcharan Singh M.L.A. (R.W. 67), who worked for respondent No. 1 at the bye-election and who was present at Moujipore polling booth from 8 a.m. till 12 a.m., have deposed to that effect.

It may be noted that there is no evidence at all on behalf of the petitioner showing that Dwarika Singh also took part in carrying voters by the truck. It may also be noted that it has not been established, as will be discussed later, that Rambilas Singh, *alias* Chhotey Lal, was a polling agent of respondent No. 1.

We, therefore, find that the petitioner has failed to prove that voters were carried in a truck from Gulmahiabag to Moujipore polling station as alleged.

Next, we propose to deal with the petitioner's case in regard to the carrying of voters in bullock carts. So far as this case is concerned, paragraph 2 of the list contains an allegation that carts were hired on payment on behalf of respondent No. 1. But the names of the persons who hired and the date or dates when the carts were hired and the places where they were hired have not been specifically stated, although the names of the persons who carried voters in bullock carts and the date when voters were so carried and the name of the polling station to which they were carried have been given. As it has been observed above while dealing with the matter of truck, the date of hiring or procuring and the date of carrying may be different and, likewise the person hiring or procuring may be different from the person carrying. Under the law, it was necessary to state the date of hiring and the name of the person hiring, and not the date of carrying and the name of the person carrying. The list is, therefore, defective on this ground.

It has been argued on behalf of the respondent that the list is also defective in as much as it does not disclose the names of voters carried. This argument has been made both in respect of the truck and the bullock carts. It may be noted that respondent No. 1 had filed a petition for striking off the paragraphs in the list on this ground at the early stage of the trial, when the petitioner had just commenced adducing oral evidence but the petition was rejected by the Tribunal's order dated 17th August 1954. The respondent went up in Revision to the Patna High Court, but there also his petition was rejected. It is, therefore, not open to the respondent to reargue the same point before this Tribunal.

The petitioner has alleged that Ramdas Yadav of Singariawan, Deonandan Yadav of Kajibigha and Amrit Singh of Arai, who were polling agents of respondent No. 1, carried voters from Kajibigha, Chakraia and Arai to the polling station at Singariawan in hired bullock carts. The list, where the above allegation is made, does not specify which polling agent carried voters from which village. But from the petitioner's evidence it appears that Ramdas carried voters from Chakraia in the cart of Gopi Mahton of Kismiria, Deonandan from Kajibigha

in the cart of Ramkhelawan of Daniawan, and Amrit from Aral in the carts of Chhotu Gope of Gulariabigha and Keshwar Mahton of Maksudpore.

Before we discuss the evidence of the various witnesses, we should like to point out the following facts and circumstances which appear to be against the petitioner's case. Kajibigha was only one mile, and Chakraja and Aral $1\frac{1}{2}$ miles, away from Singariawan polling station. Regard being had to the short distances and the position in life of the persons, who are said to have travelled in bullock carts, it seems somewhat improbable that bullock carts should have been engaged to carry such voters. It is said that the voters, so carried, were mostly females and some of them old men. But there is no evidence showing that they were parda-nashin women or were suffering from any such physical disability as to make them unable to walk such short distances. Of the four cartmen, whose carts are said to have been engaged, three have been examined on behalf of the petitioner. They are all Keshwar (P.W. 13), Ramkhelawan (P.W. 20) and Gopi (P.W. 56). They are all Kurmis by caste, thus belonging to the caste of the petitioner. Respondent No. 1 was Yadav or Gowala by caste. The evidence shows that the Gowala residents of the village concerned or of the neighbouring villages owned bullock carts, plying on hire. It is, therefore, natural to suppose that the bullock carts of the Gowalas, and not of the Kurmis, should have been engaged to carry voters of the Gowala candidate. Most of the witnesses, who have come forward to support the case of the petitioner, are Kurmi by caste. Likewise, most of the witnesses, who have deposed in favour of respondent No. 1, are Gowala by caste. It is, therefore, evident that, if the workers of respondent No. 1 had to hire bullock carts for conveyance of voters, they would not have acted so foolishly as to hire the carts of the Kurmis, who might not support respondent No. 1 in case of necessity. The evidence also shows that the owners of bullock carts, plying on hire, were required to take licence for such carts none of the three cartmen, examined in this case, has produced any licence. Weshwar Mahton (P.W. 13), on the other hand, admits in his cross examination that he had no licence for plying his bullock cart on hire. It is also noteworthy that, although bullock carts carrying voters came to Singariawan polling station from several villages, it has not been shown that this fact was brought to the notice of the Presiding Officer. Iswar Chand (P.W. 11), who was the polling agent of the petitioner at Singariawan, has, however, stated in his evidence that he had filed a written petition to the Presiding Officer about the voters being brought in bullock carts, but the Presiding Officer took no steps. That petition is not on the record. The petitioner did not take steps for production of any such petition in evidence, although Iswar Chand as will appear from his deposition, spoke about the bullock carts to the petitioner immediately after the polls. We are not prepared to accept the evidence of P.W. 11 on this point and, in the absence of such petition, we cannot but hold that Iswar Chand did not bring the fact to the notice of the Presiding Officer as claimed by him. It may also be mentioned that, although about 100 voters are said to have been conveyed in bullock carts, not a single such voter has been examined as witness on behalf of the petitioner. The above facts and circumstances indicate that the petitioner's story is not true.

Let us, now examine the oral evidence produced by the petitioner on this point. The petitioner (P.W. 1) has stated in this evidence that on the 7th June 1953 voters of villages Chakraja, Kajibigha and Aral were carried in bullock carts to Singariawan polling booth by Amrit Singh, Ramdas Yadav, and Deonandan Singh Yadav, who were polling agents and workers of respondent No. 1. The bullock carts were hired by the above named agents. From the cross examination of the witness, it appears that he had not seen voters of respondent No. 1 being carried in carts and that his statements about the bullock carts are based upon information received from others. He is, therefore, not a competent witness to speak about the alleged hiring of carts or carrying of voters. The other witnesses, who have come forward to prove the alleged hiring of bullock carts or the conveyance of voters, are Chandrika Prasad Singh (P.W. 3), Nathun Singh (P.W. 4), Ram Charitra Singh (P.W. 7), Basudeo Singh (P.W. 10), Iswar Chand (P.W. 11), Keshwar Mahton (P.W. 13), Ramkhelawan (P.W. 20), Chitnarayan Singh (P.W. 24), Gopi Mahton (P.W. 56), and Rambricha Singh (P.W. 82). The witnesses examined by the respondent to deny or to disprove the above facts are Budhu Rai (R.W. 3), Nanhak Gope (R.W. 5), Indrajit Rai (R.W. 20), Hazari Yadav (R.W. 21), Ramdas Prasad (R.W. 22), Deonandan Yadav (R.W. 25), Babulal Gope (R.W. 27) and Sheo Mahadeo Prasad (R.W. 70).

The witnesses, who have deposed about the voters being carried from Chakraja are P.W. 10, P.W. 24, P.W. 56 and P.W. 82. P.W. 10 (Basudeo Singh of Chakraja) has deposed that 10 or 12 female voters of his village, including his wife and aunt, went to the polling station in the bullock cart of Gopi Mahton. Ramdas Yadav, a worker of Sheo Mahadeo (respondent No. 1), was accompanying the cart and

paid hire of the cart. From the cross examination of the witness it appears that he did not accompany the bullock cart to the polling station and when he himself reached the polling station he made no inquiry about the female voters of his family. These things do not appear to be natural and probable. The evidence of this witness shows that he was, at first, in favour of the petitioner who was a Congress candidate, but he, subsequently, changed his mind on account of certain leaflets distributed on behalf of respondent No. 1. The leaflets in question, which will be dealt with later, were either addressed to the Harijans or contained criticisms of the Congress Government. P.W. is not a Harijan, but is a Kurmi and a castman of the petitioner. It is, therefore, improbable that he lost his sympathy for the petitioner and allowed the female voters of his family to show sympathy for the rival candidate. We are not impressed with the evidence of this witness. P.W. 24 (Chitnarayan Singh of Chakraja) also relates a similar story and says that his wife, along with other female voters of the village, went to the polling station in the bullock cart. This witness is also Kurmi by caste and it does not seem probable that he allowed his wife to go in the bullock cart engaged on behalf of the rival Gowala candidate. The witness himself went to the polling station to cast his vote, but it is somewhat strange that he did not take his wife with him. It is also strange that he did not inquire from his wife if she had cast her vote. The evidence of this witness also does not appear to be reliable. P.W. 82 (Rambricha Singh of Chakraja) says in his evidence that his mother, along with other females of the village, had been taken to the polling station by Ramdas in the bullock cart of Gopi Mahton. From his evidence it appears that he, his father and his two wives had also gone to the polling booth to cast their votes. So, when he and the other members of his family went to the polling booth on foot, there appears to be no sufficient reason why his mother went separately in a bullock cart. It has not been shown that his mother was suffering from any such physical disability as to necessitate her travelling such a short distance in a bullock cart. The evidence of this witness also does not appear to be dependable. P.W. 56 (Gopi Mahton of Kismariya) is the cartman whose bullock cart is said to have been engaged for carrying the voters. He says in his evidence that Ramdas Yadav of Kajibigha, a worker of respondent No. 1, had engaged his cart on hire to carry voters of Chakraja to Singariawan polling station, that he had carried 10 or 12 voters in one trip only, and that Ramdas paid him Rs. 5/- as hire. According to the allegation of the petitioner made in the list, attached to the election petition, Ramdas Yadav of Singariawan had engaged the cart. Gopi Mahton, thus, names a different person as having engaged the cart. It, no doubt, appears that Chakraja and Kajibigha are tolas of Singariawan. But the petitioner has treated Singariawan, Kajibigha and Chakraja as separate units. This fact clearly appears from the description given in the list annexed to the election petition. A belated attempt was, however, made by the petitioner to prove that Ramdas of Singariawan has also house at Kajibigha; P.W. 82 has deposed on this point. But this evidence does not appear to be reliable. On the other hand, the evidence adduced by respondent No. 1 shows that there is one Ramdas residing at Kajibigha, who is son of Surju Yadav, and there is another Ramdas, son of Peman, who lives at Singariawan. The petitioner contends that it was Ramdas, son of Peman, who had engaged the bullock cart. It cannot, therefore, be supposed that, when P.W. 56 spoke about Ramdas of Kajibigha, he really meant another Ramdas of Singariawan. The evidence of P.W. 56 does not, in our opinion, support the case of the petitioner.

On behalf of the respondent, Indrajit Rai of Singariawan (R.W. 18), Hazari Yadav of Kajibigha (R.W. 21), Ramdas of Singariawan (R.W. 22) and respondent No. 1 (R.W. 70) have denied that voters were carried to the polling station in bullock cart. R.W. 22 has denied that he had hired the bullock cart of Gopi Mahton of Kismiriya and had taken voters in that cart to the polling station. He has also denied that he was polling agent or worker of respondent No. 1. The Polling Agent Forms on the record do not show that Ram Das had been appointed a polling agent of respondent No. 1.

P.W. 4, P.W. 7 and P.W. 20 have deposed about the hiring of cart and conveyance of voters from Kajibigha to Singariawan polling station. P.W. 4 (Nathun Singh of Singariawan), who was polling agent of respondent No. 2 at Singariawan polling station, has stated in his evidence that he saw 10 or 12 voters of Kajibigha coming to the booth in the bullock cart of Ramkhelawan Singh of Daniawan. Deonandan Yadav, polling agent of respondent No. 1, was accompanying the voters and he paid the hire of the cart. We have observed above, while discussing issue No. 2, that respondent No. 2 had been set up a candidate for the purpose of dividing the votes of Yadav voters between respondent No. 1 and respondent No. 2, both of whom happened to be Yadav by caste. This measure was adopted for the benefit of the petitioner. P.W. 4, therefore, cannot be said to be an independent witness. P.W. 7 (Ramcharitar Singh of Singariawan) has deposed that about

10 or 12 voters of Kajibigha had come to Singariawan in the bullock cart of Ram-khelawan and that Deonandan, worker of respondent No. 1, was accompanying the cart. He cannot say if the cart had been hired or not. He did not speak about this fact to any person before giving evidence. It is, therefore, surprising that he was cited as a witness. We are not impressed with the story told by this witness. P.W. 20 (Ramkhelawan of Daniawan) is the cartman who is said to have carried the voters. He says that Deonandan had hired the cart to carry voters from Kajibigha to Singariawan and he carried 10 or 12 voters in one trip and got Rs. 2/- as hire from Deonandan. This witness is Kurmi by caste and from his cross examination it appears that he was helping the Congress party in the bye-election. It is highly improbable that his cart should have been engaged by the rival candidate's worker to carry voters. It is also improbable that he consented to do this work. It was suggested to this witness in cross examination that he does not own any cart and this suggestion is supported by the evidence of Babu Lal of Daniawan (R.W. 27). The evidence of the petitioner's witnesses, thus, does not appear to be reliable and trustworthy.

On behalf of the respondent, R.W. 18 (Indrajit Rai of Singariawan), R.W. 21 (Hazari Yadav of Kajibigha), R.W. 25 (Deonandan Yadav of Kajibigha) and R.W. 70 (respondent No. 1) have deposed denying the alleged hiring of bullock cart or carrying of voters in the cart. Deonandan has further denied that he was the polling agent of respondent No. 1 or did any work for him. There is no Polling Agent Form on the record showing such appointment of Deonandan Yadav.

The witnesses, who have come forward to prove the alleged hiring of bullock carts and carrying of voters from Arai to Singariawan polling station, are P.W. 3, P.W. 11 and P.W. 13. P.W. 3 (Chandrika Prasad Singh of Arai) says that Amrit Singh of Arai, worker of respondent No. 1, brought 75 to 80 voters of Arai in bullock carts of Chhotu Gope and Keshwar Mahton. Each cart performed 4 trips and Amrit Singh paid Rs. 10/- as hire to each cart man. This witness was working for the petitioner in the bye-election. He has stated the names of some of the voters who are said to have been carried to the polling station in bullock carts. But when the names given by him are checked with reference to the marked copy of the electoral roll of Arai (Ext. C11), it is found that the following persons, out of the persons named by him, had not cast their votes:—

S. No. in electoral roll	Name of voter
167.	W/o Mewa Lal.
377.	W/o Nandan Pandey.
431.	W/o Medi Chamar.
463.	W/o Amrit Dom.
518.	Sampat Gope.
648.	Behari Gope.

It is difficult to believe that the above named persons, who had not cast their votes, had really gone to the polling station. So, this fact alone is sufficient to discredit the testimony of the witness. P.W. 11 (Iswarchand of Arai), who was the polling agent of the petitioner at Singariawan booth, has said in his evidence that he saw voters getting down from the two carts and Amrit Singh paying hire to the cartmen. From his evidence, it appears that Amrit Singh, polling agent of respondent No. 1, and Ramjatan Singh, another worker of respondent No. 1, brought the voters in bullock carts. The name of Ramjatan Singh has not been mentioned in the list, annexed to the election petition. P.W. 11, as has been pointed out above, has said that he had filed a written petition about voters being brought in bullock carts to the Presiding Officer, but the Presiding Officer took no steps. In the absence of such written petition, it is difficult to accept his statement as true. The Presiding Officer also has not been examined by the petitioner to prove this fact. Further, it is difficult to believe the story that the Presiding Officer did not take any step when such a major corrupt practice was brought to his notice. The evidence of this witness cannot, therefore, be relied upon. P.W. 13 (Keshwar Mahton of Maksudpore) is the cartman who is said to have carried the voters. He says that Amrit Singh, a worker of respondent No. 1, had hired his cart to carry voters of Arai to the polling station, that he had carried about 45 voters in four trips, that one Chhotu, another cartman, also carried some voters and that Amrit Singh paid him Rs. 10/- as hire. From his cross examination it appears that Amrit Singh had hired his cart in the evening of 6th June, 1953.

The voters were carried to the polling station on 7th June, 1953. So, it appears from the petitioner's evidence that the date of hiring the bullock cart of Keshwar Mahton was different from the date of carrying voters in that cart. We have already observed above that the date of hiring may be different from the date of carrying and the list, annexed to the election petition, is defective in so far as it does not state the date of hiring. From the evidence of P.W. 13, it appears that he came to the polling station four times that day, bringing voters in his bullock cart, and had to wait at the polling station for some time for getting the hire of the cart. It is impossible to believe that this corrupt practice was not noticed by the Presiding Officer or other officers posted at the polling station. It is also impossible to believe that the petitioner's agents or workers at that polling station entirely ignored this corrupt practice and did not file a petition to the Presiding Officer. The position seems to have been realised by the petitioner's polling agent, P.W. 11, when he came to give evidence in this case and he, therefore made a futile attempt to prove that he had filed a petition to the Presiding Officer. But the fact remains that no such petition was really filed. This is a circumstance which entirely shakes the evidence of P.W. 13. There are also other circumstances which shake his evidence. P.W. 13 (Keshwar Mahton) was an elector in the Electoral Roll of Shahjahanpur polling station and serial No. 9 of the marked copy of the Electoral Roll (Ext. C28) shows that Keshwar Mahton had voted. But Keshwar, in order to show that he was engaged for the whole day in carrying voters to another polling station, has deposed that he did not cast his vote. Further, Keshwar Mahton admits in his cross examination that he had no licence for plying his bullock cart on hire. It has been suggested by the respondent that Keshwar had, in fact, no bullock cart. R.W. 3 (Budhu Rai) and R.W. 5 (Nanhak Gope), who are co-villagers of Keshwar, have definitely said that Keshwar never owned a bullock cart. The other cartman, Chhotu Gope of Gulariabigha, has not been examined by the petitioner and there is no explanation for his non-examination. In conclusion, we find that the evidence of the petitioner's witnesses on this point is not satisfactory and reliable.

On behalf of the respondent, besides R.W. 3 and R.W. 5, whose evidence has already been referred to above, R.W. 20 and R.W. 70 have deposed on this point. R.W. 70 (respondent No. 1) has made a general denial. R.W. 20 is Amrit Singh, who is said to have hired the cart and carried the voters. He has denied that he had hired any cart and had carried voters to Singariawan in hired carts. He has also denied that he was the polling agent of respondent No. 1. The Polling Agents Forms on the record do not show that Amrit Singh had been appointed polling agent of respondent No. 1.

We, upon consideration of the entire evidence, find that the petitioner has failed to prove that voters were carried in hired bullock carts to Singariawan polling station from Chakrāja, Kajibigha and Arai by the polling agents of respondent No. 1 as alleged.

This issue, is therefore, decided against the petitioner.

Issue No. 4.—This issue contemplates a corrupt practice under section 123(5) of the Representation of the People Act, 1951. According to the above section, the corrupt practice consists in "the publication by a candidate or his agent, or by any other person with the connivance of the candidate or his agent, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature or withdrawal of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election". The ingredients of this corrupt practice, therefore, are:—(a) publication by a candidate or his agent, or by any other person with the connivance of the candidate or his agent; (b) of any statement of fact; (c) which is false, and which he either believes to be false or does not believe to be true; (d) in relation to the personal character or conduct of any candidate, or in relation to the candidature or withdrawal of any candidate, (e) being a statement reasonably calculated to prejudice the prospects of that candidate's election.

A statement of fact is to be distinguished from a statement of opinion. A statement of opinion, however unjust or harsh it may be, without reference to any concrete fact, does not come within the mischief of section 123(5). The mere statement of a defamatory opinion, unless coupled with the grounds upon which it is formed, is not a statement of fact. Further, the statement must relate to the personal character or conduct. A distinction must be drawn between the criticism of a candidate as a politician or a public man and statements in relation to his personal character or conduct. Criticisms of his public or political activities, however ill-mannered, unfair or exaggerated it may be, is not forbidden. It is only when the man underneath the politician is attacked and his honour, integrity or veracity assailed in the statement, that the statement becomes offensive within

the meaning of section 123(5). In support of the above views, reference may be made to the cases reported in Hammohd's Election Cases (1920-1935) at pages 231 and 677, Indian Election Cases by Sen and Poddar at page 399, 3 E.L.R. at page 248, Gazette of India Extraordinary, Part II, dated the 25th September, 1953, at page 2985, and Gazette of India Extraordinary, Part II, dated the 15th November, 1954 at page 2231. Keeping the above principles in view, let us examine the leaflets "A" and "B" and the booklet "C", which have been marked material Exts. I, II, III respectively.

Ext. I is an appeal to the Harijans of Fatwa Thana and it asks them to be "Beware" (Hoshiyar). In the first paragraph it is said that in the last election Sri Deosaran Singh, a Congress candidate, was elected from Fatwa Thana. After that, it poses a question, "What has he done for the Harijans?" Then it proceeds to say in the second paragraph, "Is it not correct that at Kanchanpore, Mustafapore, Sirpatpore, Mohiuddinpore, Narma and other places the Harijans and Dushads were illegally implicated in false cases? As a direct proof of it, they have been recently prosecuted in a bad livelihood (B.L.) case and put in Jail". In the third paragraph, it is recited "Deosaran Singh has gone to the length of saying that he does not want to look at the Harijans even with 'phuti ankhn'. He says that this is an opportune moment for taking revenge for Andari-Gawasporc affair". The last paragraph says "You can understand what high handedness (atyachar) will a man (referring to Sri Deosaran Singh), who is full of communal feelings, do on being elected as representative. Therefore, our appeal is that you should not vote for Sri Deosaran Singh even by mistake and if you desire the welfare of the society, you should vote for the socialist candidate".

The second paragraph of Ext. I contains, undoubtedly, a statement of fact, but it does not clearly appear from the contents of that paragraph that the statement is in relation to the personal character or conduct of Sri Deosaran Singh. From the evidence on the record, it appears that certain Dushadhs of Dirpatpore, Mustafapore, Narwan and Kanchanpore were prosecuted in criminal cases; some of these cases were started at the instance of the Kurmis. One of the prominent cases was a rioting case in 1948 or 1949 between the Kurmis and the Dushadhs in which some Kurmis had been killed; this was the Andari-Gawasporc case. Another prominent case was a B.L. Case started in 1951 against the Dushadhs of Sirpatpore and Mustafapore. The B.L. Case and the Andari-Gawasporc rioting case have been specifically mentioned in the leaflet; other criminal cases regarding which evidence has been given have not been specifically referred to. It has been contended on behalf of the petitioner that, in the second paragraph of Ext. I, there is an implied statement that the Harijans and Dushadhs were falsely implicated in the cases at the instance of Sri Deosaran Singh. The respondent, on the other hand, contends that paragraph 2, read with paragraph 1, indicates that Sri Deosaran Singh, who was elected from Fatwa Thana in the last election, brought no relief to the Harijans and Dushadhs of that locality who had been illegally implicated in false cases. We have carefully examined paragraph 2 and we hold that, from the language of that paragraph, it does not clearly appear that the Harijans and Dushadhs were implicated in the cases at the instance of Sri Deosaran Singh. If, at all, there is any reference in that paragraph to Sri Deosaran Singh, such reference, in our opinion, is to his work as the representative at Fatwa Thana, or in other words, to his work as a public man. This is manifest from the fact that in the first paragraph there is reference to the election of Sri Deosaran Singh at the last election. The statement in paragraph 3 is that Sri Deosaran Singh says that he does not want to look at the Harijans even with "phuti ankhn". This is an expression by Sri Deosaran Singh of his feelings towards the Harijans, indicating intense hatred or annoyance. Such expression of feelings cannot be said to have any relation to his personal character or conduct. The further statement in that paragraph, "Deosaran Singh says, this is an opportune moment for taking revenge for Andari-Gawasporc affair", does not also clearly appear to be a statement in relation to his personal character or conduct. It does not necessarily flow from the statement that Sri Deosaran Singh actively instigated his castemen (Kurmis) or any other people to take revenge against the Harijans. It is not clear upon reading the leaflet what opportunity for taking revenge was being pointed out. The language of the leaflet is too vague to convey the idea that Sri Deosaran Singh meant to say that the Harijans should be implicated in the B.L. case or any other criminal case. The last paragraph of the leaflet contains two kinds of statements. The first statement means that Sri Deosaran Singh is full of communal feelings. This statement is not a statement of fact, but is a statement of opinion, without reference to any concrete fact, regarding Sri Deosaran Singh. The second statement means that Sri Deosaran Singh, on being elected as representative, will do a lot of high handed acts (atyachar). This is also not a statement of fact, but it is the apprehension of the persons making the appeal about the future acts of Sri Deosaran Singh. In our opinion, none of the statements contained in Ext. I comes within the mischief of section 123(5) of the Act.

Ext. II is another kind of leaflet, containing an appeal to the Harijan voters not to vote for the Congress candidate. In the several paragraphs of this leaflet, there are criticisms of the acts of commission and omission (in regard to the Harijans) of the Congress Government in Bihar. The leaflet gives "some examples of bad acts committed by the Government of Babu Deosaran Singh against the Harijans". It is abundantly clear that the statements have no reference to the personal character or conduct of Sri Deosaran Singh and, therefore, do not come within the purview of section 123(5) of the Act.

Ext. III is a booklet containing various songs. The petitioner contends that the statements contained in songs Nos. 1, 2 and 4 are offensive within the meaning of section 123(5) of the Act. Song No. 1 is an appeal to the Kisans not to vote for the Congress candidate. It contains some statements showing the attitude of Sri Deosaran Singh, as a minister of the Government, towards the Kisans. The statements are, thus, criticism of Sri Deosaran Singh as a minister, and as such, do not come within the scope of section 123(5) of the Act. Song No. 2 describes the bewilderment of the Congress on seeing the attitude of the Kisans who are for the Socialist candidate. It also contains some statements criticising the action of the Congress Government. There is nothing in the song which can be said to refer to the personal character or conduct of Sri Deosaran Singh. Song No. 4 contains several statements which appear to be very harsh criticisms of Sri Deosaran Singh. It is stated therein "You, Deosaran, have ruined Fatwa and have committed general massacre of the gentlemen of this Thana. Since you have come here with the mission of vote, you have destroyed wealth, religion and unity. Before the public, you swore by the name of virtue, but as soon as you become victorious you began to act contrary to your promises. Kurmi became Prithviraj and you, Jaychand (meaning, you have become traitor to your Kurmi brethren) and, thus, you have ruined them today. You have become "bug" by sucking the blood of the community. It cannot be doubted that you have bitten others like a snake. You are sinner and wicked, and the Congress is good, but you have defamed that institution today. Listen with attention, you fool, votes have been withheld only on account of your name". The author of the song appears to have indulged in poetic hyperboles and to have painted Sri Deosaran Singh with the blackest paint. But none of the statements is a "statement of fact" within the meaning of section 123(5). The statements are expressions of opinion, without reference to any concrete fact, regarding Sri Deosaran Singh. The remarks, undoubtedly, appear to be very harsh and pungent and may be, perhaps, defamatory but they are not, in our judgment, offensive within the meaning of section 123(5) of the Act. Further, the statements contain criticisms of the public or political activities of Sri Deosaran Singh and have no reference to his personal character or conduct. Such criticisms are not contemplated by the above section.

Next, we have to consider whether the leaflets (Exts. I and II) and the booklet (Ext. III) had been published by respondent No. 1 or his agent or by any other person with the connivance of respondent No. 1 or his agent. In the present case, there is no allegation of publication by respondent No. 1 or by other persons (not agents) with the connivance of respondent No. 1 or his agents. According to the allegations made by the petitioner in paragraph 12 of the election petition and paragraphs 3, 4 and 5 of the list, annexed to the election petition, the leaflets and the booklet in question had been distributed, on behalf of respondent No. 1, by his certain polling agents (named in the list), at certain villages and on certain dates (named in the list). The petitioner is, therefore, required to prove that the alleged distributors were the polling agents of respondent No. 1. This matter will be discussed more fully while dealing with the evidence of publication of the leaflet, Ext. I, at Dariapore.

It may be noted that there is no allegation, much less any evidence, indicating that respondent No. 1, or his agent, or any other person with the connivance of respondent No. 1 or his agent, got the leaflets and the booklet printed. It appears that the names of 14 persons, mostly Harijans, have been printed as "Nivedak" (persons making appeal) at the foot of the leaflet, Ext. I. Two of such persons are Chhedi Brahil and Deokali Das. The petitioner has examined Chhedi Paswan (P.W. 16) and Deokali Dusadh (P.W. 43) who claim the names, Chhedi Barahil and Deokali Das respectively, as their *alias* names. They have been examined to disown any connection with the leaflet, Ext. I. The respondent, on the other hand, contends that the persons named in the leaflet are different from P.W. 16 and P. W. 43. For the purposes of this case, it does not seem necessary to decide who actually are the persons named as "Nivedak" in the leaflet. It may, however, be mentioned that the persons named as "Nivedak" in the leaflet have not been alleged or shown to be the agents of respondent no. 1. The leaflet, Ext. II, contains at the foot names of 10 persons, all Harijans, as making the appeal. The booklet, Ext. III, contains on the front page, the name of Bali Ram Singh of

Narma as author (Lekhak) and the name of Kameshwar Prasad Singh of Narma as publisher (Prakashak). It has not been alleged or proved that the persons named in Exts. II and III were agents of respondent No. 1.

The petitioner's only allegation is regarding distribution of the leaflets and the booklet. Before we discuss the evidence regarding distribution of the leaflets and the booklet, we would like to consider the question whether the leaflets and the booklet were in existence before the date of the poll; as alleged by the petitioner, or were manufactured after the date of the poll for the purposes of this case, as contended by the respondent. From the evidence of the petitioner (P. W. 1) it appears that he had received copies of the leaflets and the booklet from his workers during a period of 5 days preceding the poll. He has named Balashwar Ram (P.W. 53), Sahdeo Mahton (P. W. 54) and Ramkhelawan Singh (P.W. 85) among those workers; the above named persons have corroborated his statement. Ramkhelawan Singh was Election in Charge of the Congress in the Fatwa bye-election. Sri Krishna Ballav Sahay (P. W. 63), who is the Revenue Minister in the Government of Bihar, has deposed that he used to visit the different villages of Fatwa constituency during the period from 16th May, 1953 till the date of the poll and had addressed several election meetings during that period. During his tour, he was shown, in the first week of June, the two leaflets, Exts. I and II. He had contradicted the statements made in the leaflets, regarding Deosaran Babu being an enemy of the Harijans, in the meetings held at Saidanpore and Andari. The witness had not seen actual distribution of the leaflets and so did not state anything about the alleged distribution. There appears to be no good ground to reject his evidence that leaflets, Exts. I and II, were shown to him in the first week of June, 1953, and that he had contradicted the statements contained there in certain meetings. Sri Basudeo Prasad Singh (P.W. 53), who was one of the Secretaries of Bihar Pradesh Congress Committee in 1952-53, has also said in his evidence that he had seen the leaflets, Exts. I and II, on 4th June 1953. The petitioner has produced in evidence "Rashtravani" (a Hindi newspaper) of the date, 5th June, 1953; it is Ext. 9. There is a column in that paper giving news about meetings held on 4th June, 1953 at Fatwa, Usfa and Daniawan; the meetings were addressed by Sri Jagjiwan Ram, Sri Chandrika Ram, and other persons [vide Ext. 9(a)]. It is stated in Ext. 9(a) that Sri Chandrika Ram M.L.A. declared in that meeting that the Socialist Party had been trying to mislead the public by distribution of false or forged leaflets (jali parche) Sri Chandrika Ram (P.W. 58) has stated in his evidence that he had addressed election meetings held on 4th June at Fatwa and Daniawan. From the evidence on the record, it appears that a counter leaflet (Ext. IV), challenging the statements made in the leaflets, Exts. I and II, had been printed and published in Fatwa constituency before the poll. A copy of such leaflet (Ext. IV) was produced at the early stage of the hearing by the petitioner's witness, Kesho Prasad (P.W. 2). Other witnesses, namely, P.W. 58 and P.W. 85, have also produced copies of such leaflet (Exts. IV-1 and IV-3). The evidence adduced on behalf of the petitioner shows that Sri Basudeo Prasad Singh (P.W. 53), one of the then secretaries of Bihar Pradesh Congress Committee, was consulted about issue of such rejoinder and he agreed to such rejoinder being issued. A draft [Ext. 10(a)] was prepared by Sri Ramkhelawan Singh and was sent to "Navashakti Press" for printing. P. W. 72, an employee of the Press, has produced the manuscript [Ext. 10(a)] and also a copy of the printed rejoinder (Ext. IV-2) which were in the custody of the Press. Several of the petitioner's witnesses, namely P.W. 2, P.W. 44, P.W. 48, P.W. 49, P.W. 57, P.W. 58 and P.W. 85, have deposed about the distribution of the counter leaflet Ext. IV. The leaflet contains an appeal to the Harijans of Fatwa Thana to be beware of the false propaganda of the Socialist Party, emphasising that the Congress candidate, Sri Deosaran Singh, is the true well wisher of the Harijans. At the foot, it contains the names of 22 persons as making the appeal; Kesho Prasad of Rasulpore (P.W. 2) is one of them. The above facts and circumstances point to the conclusion that the leaflets and the booklet, referred to in the election petition, did exist before the date of the poll and it is simply preposterous to contend that those documents, as also Ext. IV, were manufactured and brought into existence after the date of the poll for the purposes of this case.

But the mere fact that the leaflets (Exts. I and II) and the booklet (Ext. III) existed before the date of the poll will not be sufficient to establish the publication of those documents by the polling agents of respondent No. 1 as alleged. We have to examine the evidence on the point of such distribution and then come to a finding.

We, now, propose to deal with the evidence regarding publication of the leaflet, Ext. I, in different villages.

PUBLICATION AT DARIAPORE

The petitioner has alleged that Bishundeo Tiwari of Dariapore, polling agent of respondent No. 1, distributed the leaflet in that village on 1st to 6th June, 1953. The petitioner's witnesses, who have deposed on this point, are P.W. 1 (Petitioner himself), P.W. 32 (Ramjatan Singh), P.W. 37 (Mahendra Singh), P.W. 39 (Rameshwar Das), P.W. 44 (Nawal Kishore Sinha), P.W. 71 (Girish Tiwari) and P.W. 75 (Sarju Singh). From the cross examination of P.W. 1 it appears that he had not seen any of the leaflets, Ext. I and II, or the booklet, Ext. III, being distributed. He received information from other people regarding the distribution. His evidence, therefore, is of very little value to prove the actual distribution of the leaflets and the booklet. P.W. 32 is resident of another village, Laskarichak, which is about 1½ miles away from Dariapore. He has said in his evidence that he visited Dariapore on 3rd or 4th June, 1953, when he found Bishundeo Tiwari, worker of respondent no. 1, distributing leaflets, exactly similar to Ext. I, in that village. From his cross examination it appears that he had visited Dariapore to canvass for votes for the Congress candidate, but he cannot say if there were Congress workers at Dariapore. He says that he was working for the Congress candidate in the bye-election of his own accord, without being asked by any body. His visit to Dariapore is of doubtful nature. P.W. 37, who is resident of Dariapore, has stated in his evidence that on 6th June, 1953, Bishundeo Tiwari distributed the leaflet, Ext. I, in his village. This witness has, however, made some improvement on the statement of P.W. 32 by saying that Bishundeo Tiwari was polling agent of respondent No. 1 at Parsa polling station and he has an *alias* name, Bishwanath Tiwari. P.W. 75, who is resident of Chaksoorat, which is said to be a *tolla* of Dariapore, has also said that Bishundeo Tiwari, son of Ramsingar Tiwari, of Dariapore has an *alias* name, Bishwanath Tiwari. According to his evidence, the leaflet was distributed by Bishundeo Tiwari one day before the poll (i.e. on 6th June, 1953) in *tolla* Chaksurat. Chaksurat has not been named in the List as a place of distribution. P.W. 39, a resident of village Parsa, which is one mile from Dariapore, has deposed that he had visited Dariapore to see his relation's son, who was ill, when he noticed Bishundeo Tiwari distributing the leaflet. He does not say that Bishundeo Tiwari was connected in any way with respondent No. 1. He is illiterate and he says that the leaflet was read out to him by somebody else. His evidence does not clearly establish that the leaflet, which he saw being distributed was exactly similar to Ext. I. P.W. 44 is the Chairman of Patna Sadar Local Board and is also a Congress Worker. He says that on 6th June, 1953, when he had visited Dariapore to supervise the work of canvassing on behalf of the Congress candidate, he saw a Socialist worker, Bishundeo or Bishwanath Tiwari, distributing leaflets, exactly similar to Ext. I. From his cross examination it appears that he did not know the distributor before that day. His evidence that the distributor was Bishundeo or Bishwanath is not dependable. P.W. 71 is a member of the Bihar State Legislative Assembly. He belongs to the district of Saran. He says that he had been deputed by the Secretary of the Bihar Pradesh Congress Committee to work in the bye-election on behalf of the Congress candidate. He, further, says that he went to Dariapore on 2nd June, 1953 when he saw distribution of leaflets, exactly similar to Ext. I. He, however, cannot give the name of the man who was distributing the leaflets. The evidence of this witness, although it may prove publication of the leaflet at Dariapore, is not of any help in showing that Bishundeo or Bishwanath was distributing the leaflet.

On behalf of the respondent, besides respondent No. 1 (R.W. 70), who has made a general denial, on Brijkishore Singh (R.W. 61), who is resident of village Panchrukha, which is said to be situated close to Dariapore, has denied the distribution of the leaflet, Ext. I, at Dariapore on behalf of the Socialist Party. From his cross examination it appears that he had no occasion to move with Socialist workers at Dariapore and he did not know how the Socialist Party was doing the propaganda work. His denial of the alleged distribution, therefore, does not appear to be dependable. It is noteworthy that the respondent has not examined any witness of village Dariapore to deny the alleged distribution of the leaflet.

Although there is some evidence showing the distribution of the leaflet, Ext. I, at Dariapore, the petitioner has failed to prove that the distributor was Bishundeo Tiwari, polling agent of respondent No. 1. It is contended by the respondent that there is no such person as Bishundeo Tiwari in village Dariapore, although there is one Biswanath Tiwari, son of Ramsingar Tiwari, in that village. This contention finds support in the entries in the Electoral Roll (Ext. B). Serial no. 33 of the Electoral Roll of village Dariapore, P.O. Nandalalabad, shows the name of Biswanath Tiwari of house no. 9 as an elector, while serial no. 32 refers to Ramsingar Tiwari of house no. 9. There are several other electors in that house, but we do not find the name of Bishundeo Tiwari in the Electoral Roll. This matter

must have been noticed by the petitioner and he, in course of his evidence, undertook to prove that Bishundeo Tiwari had an *alias* name, Biswanath Tiwari. It has been stated above that P.W. 37 and P.W. 75 have deposed on this point. On the other hand, P.W. 81 has said that Biswanath Tiwari, son of Ramsingar Tiwari, is not known as Bishundeo Tiwari. From his evidence it appears that he and Biswanath were class mates. His evidence on this point is, therefore, entitled to weight. Further, it is noteworthy that the petitioner has not alleged in the List, appended to the election petition, that Bishundeo Tiwari has an *alias* name, Biswanath Tiwari, although he has given the *alias* name of another man, namely, Rambilas Singh of Gulmahiabag, in paragraph I of the List. The petitioner's evidence, that Bishundeo Tiwari is also known by the name of Biswanath Tiwari, cannot, therefore, be accepted.

The next question for consideration is whether Bishundeo Tiwari, the alleged distributor of the leaflet, was the polling agent of respondent No. 1. It has been argued on behalf of the respondent that the petitioner, in order to succeed, has to prove not only the fact of distribution of the leaflet, but also the fact that the distribution was made by the polling agent of respondent No. 1 as alleged. Both are material facts regarding the corrupt practice. The learned advocate for the petitioner has, on the other hand, contended that there is no specific denial in the written statement that Bishundeo Tiwari, as also the other persons named as polling agents in the list were the polling agents of respondent No. 1. In paragraph 17 of the written statement there is denial of distribution on behalf of respondent No. 1 and in paragraph 19 there is a further denial of distribution by workers or agents of respondent No. 1. In view of the pleadings of the parties and also in view of the fact that the onus is upon the petitioner to prove all the material facts constituting the alleged corrupt practice, we have no doubt that the burden of proof is upon the petitioner and he has to establish that the distributor was the polling agent of respondent no. 1, as alleged by him. The contention of the respondent, therefore, appears to be correct.

Our attention has been invited to the wordings of section 123 (5) of the Representation of the People Act, 1951. The section speaks of the publication by the candidate's agent, and not by the candidate's polling agent. "Agent", as defined in section 79(a) of the Act, includes an election agent, a polling agent and a counting agent and any person who is held to have acted as an agent in connection with the election with the knowledge or consent of the candidate; it may be noted that the functions of a polling agent are quite different from those of an election agent or a counting agent. But, when the petitioner has specifically alleged that the person distributing the leaflet was a polling agent (i.e., agent of a particular class), we consider that he has to prove this fact like any other material fact.

According to section 46 of the Act, a candidate or his election agent, can appoint polling agents in the prescribed manner. Rule 12 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, prescribes the manner of appointment of polling agent. It says that the appointment shall be made by a letter in writing in duplicate in Form 6 signed by the candidate or his election agent. Each candidate, or his election agent, may appoint three polling agents for each polling station at least three days before the commencement of the poll. Form 6 is the form of the letter addressed to the Returning Officer for the Constituency regarding appointment of polling agent or counting agent; it has to be signed by the candidate or his election agent and it has also to be signed by the polling agent or counting agent, indicating his consent to act as such. It is, thus, clear that polling agent could be appointed only by means of Form 6. It was, therefore, necessary for the petitioner to prove that Bishundeo Tiwari had been appointed a polling agent of respondent No. 1 in the prescribed manner. The petitioner realised this position and so he called for all the Polling Agent Forms of respondent No. 1 in order to prove that Bishundeo Tiwari, as also other persons named by him as polling agents, had been appointed as polling agents of respondent no. 1. All the forms available were sent to the Tribunal. The forms that are on the record are Exts. 14, 17, 25, 30, 30(a) and Exts. U to U(92). None of these forms relates to Bishundeo Tiwari. It is, therefore, clear that the only document which could prove that Bishundeo Tiwari was a polling agent is not on the record and, in the absence of such document, it is very difficult to hold that Bishundeo Tiwari was a polling agent of respondent No. 1. P.W. 37 and P.W. 75, no doubt, have said in their evidence that Bishundeo Tiwari was a polling agent of respondent No. 1 at Parsa booth. But, in the absence of the necessary document, we are not prepared to accept their statement.

We, therefore, hold that it has not been established that the leaflet, Ext. I, was published at Darlapore by Bishundeo Tiwari, polling agent of respondent No. 1.

PUBLICATION AT NOHTA AND FATWA BAZAR

Nohta and Fatwa Bazar are different mahallas of Fatwa. According to the petitioner's allegation in the List, appended to the election petition the leaflet (Ext. I) was distributed by Gaurishankar Yadav, polling agent of respondent No. 1, at Nohta on 1st to 6th June, 1953, and by Mahendra Singh, another polling agent of respondent No. 1, at Fatwa Bazar on those dates. The witnesses who have been examined by the petitioner to prove the alleged distribution at Nohta are P.W. 17 (Moti Lal Gupta), P.W. 27 (Lakshman Prasad Singh), P.W. 64 (Kishore Lal), P.W. 85 (Ramkhelawan Singh) and P.W. 89 (Narsingh Narain Singh). P.W. 17 says that he lives at Nohta and has got his shop in Fatwa Bazar. He says further that the leaflet, Ext. I, was distributed at Nohta from 1st June to 6th June, 1953 by Gaurishankar a worker of the Socialist Party. He also speaks about distribution of Ext. I at Fatwa Bazar on those dates by one Mahendra Singh. He was a seconder in one of the nomination papers of the petitioner and from his cross examination it appears that he is not an independent witness. His evidence cannot, therefore, be relied upon. P.W. 27 also belongs to Fatwa and claims to have business at Fatwa Bazar. He says that Gaurishankar, a worker of respondent No. 1, distributed the leaflet (Ext. I) at Nohta on 2nd and 4th June, 1953. He also speaks about distribution of that leaflet at Fatwa Bazar by Mahendra Singh. He says further that this leaflet, as also another booklet containing songs (Ext. III), were given to him by Gaurishankar, but he returned them to him after reading them. It does not seem probable that the witness, who is a member of the Congress and who was working for the petitioner in the bye-election, should have returned the leaflet and the booklet. The evidence of this witness also is not convincing. P.W. 64 belongs to another village, Khusrupore, and had worked in the bye-election as polling agent of the petitioner at Khusrupore booth. He says that he had gone to Nohta to the house of his relation, Mathura Prasad, on 4th June, 1953, when he found Gaurishankar Yadav, a worker of respondent No. 1, distributing the leaflet, Ext. I. This witness also does not appear to be an independent witness and we do not consider it safe to rely upon his evidence. From the cross examination of this witness it appears that he did not know Gaurishankar before that day. P.W. 85, who was election incharge of the Congress in the Fatwa bye-election, has also deposed about the distribution of the leaflet, Ext. I, in Fatwa Bazar and Nohta on 2nd or 3rd June, 1953. According to him, Gaurishankar distributed the leaflet in Fatwa Bazar and Mahendra in Nohta. He says that both were workers of respondent No. 1. This witness has, thus, made statements in direct conflict with the allegations in the List, so far as the names of the alleged distributors are concerned. It is, therefore, difficult to believe that he had seen the distribution of the leaflet as claimed by him. P.W. 89 belongs to another village, named Sarthua, but he claims to have grain business at Fatwa. He says that he saw Gaurishankar Yadav, a worker of the Socialist party, distributing the leaflet, Ext. I, and the booklet, Ext. III, in Fatwa Bazar. This witness also makes statement in direct conflict with the allegation in the List. The evidence produced by the petitioner to prove the distribution of the leaflet, Ext. I, at Nohta does not appear to be satisfactory and convincing.

On behalf of the respondent, R.W. 9 (Dwarika Nath Tiwari Fatwa), R.W. 11 (Raghunath Prasad of Fatwa), R.W. 13 (Abdul Sattar of Fatwa), R.W. 14 (Sukhdeo Das of Fatwa), R.W. 40 (Prayag Lal of Sora Koti) and R.W. 46 (Hazari Lal of Nohta) have denied the publication of Ext. I at Nohta or the distribution of any such leaflet by Gaurishankar Yadav. Gaurishankar Yadav (R.W. 30), who is alleged by the petitioner as being the distributor, has also denied the distribution of the leaflet by him.

The evidence of R.W. 14, who is a Harijan belonging to Bankipore Gorakh, a Mahalla of village Fatwa, is very important. He has definitely said that not a single Harijan lives in Nohta. From his evidence it appears that the majority of the Harijans of Fatwa live in Bankipore Gorakh and only one family of Harijan lives in Fatwa Bazar. His statement is amply corroborated by the evidence of R.W. 26 (Mahendra Singh of Fatwa Bazar) and also by the entries in the Electoral Roll (Ext. B) in respect of Bankipore Gorakh, Fatwa Bazar and Nohta which have been treated as separate units. The leaflet, Ext. I, contains an appeal to the Harijans and it is only natural to suppose that the leaflet, which was intended only for the Harijans, should have been distributed in villages or Mohallas where the Harijans resided, and not at a place where no Harijan lived. This is a circumstance which goes a long way in disproving the petitioner's case regarding the distribution of the leaflet in Nohta.

The petitioner's witnesses, who have deposed about the distribution of the leaflet in Fatwa Bazar, are P.W. 14 (Upendra Narayan Mishra of Gobindpore), P.W. 15 (Banshi Lal of Gobindpore), P.W. 17 (Moti Lal Gupta of Fatwa), P.W. 18

(Ganesh Lal of Fatwa), P. W. 19 (Surendra Nath Pathak of Fatwa), P. W. 27 (Lakshman Prasad Singh of Fatwa), P.W. 52 (Girjanandan Singh), P.W. 54 (Sahdeo Mahton), P.W. 55 (Baleshwar Ram), P.W. 58 (Chandrika Ram), P.W. 59 (Sita Ram Keshari of Dinapore), P.W. 60 (Ramchandra Singh of Kiran Chak), P.W. 61 (Lalji Prasad Singh of Baikatpore), P.W. 62 (Dirgopal Das of Baikatpore), P.W. 73 (Choudhry Ram Prasad Shrama of Pandarak), P.W. 85 (Ramkhelawan Singh) and P.W. 86 (Rambrich Singh of Sarthua). The evidence of P.W. 17, P.W. 27 and P.W. 85 has already been dealt with in connection with the distribution of the leaflet at Nohta. Their evidence regarding distribution of the leaflet at Fatwa Bazar also does not appear to be reliable. P.W. 14 speaks of the distribution of the leaflet, Ext. I, and the booklet, Ext. III, in Fatwa Bazar by a Socialist worker, named Ram Prasad. Ram Prasad has not been named in the election petition as a distributor in Fatwa Bazar. P.W. 15 says that Mahendra Singh, on behalf of the Socialist party, distributed Ext. I in Fatwa Bazar on 6th June and that he got one such leaflet. He says further that, after reading the leaflet, he made it over to Kesho Prasad, a worker of the Congress. Kesho Prasad (P.W. 2) does not support him on this point. P.W. 15 speaks about the distribution of only one leaflet, Ext. I, but from the evidence of other witnesses it appears that Mahendra Singh was distributing simultaneously the leaflet, Ext. I, and the booklet, Ext. III. P.W. 18 says that Mahendra Singh, worker of respondent No. 1, distributed the leaflet Ext. I in Fatwa Bazar from 1st to 6th June, 1953, but from his cross examination, it appears that he got the leaflet on two dates only, 4th and 5th June. He has not produced those leaflets. The witness perfectly remembers the heading of the leaflet, Ext. I, but he cannot say the heading of the leaflet, distributed on behalf of another candidate, Ragho Singh, although he admits that he had got that leaflet too. The evidence of this witness does not appear to be dependable. P.W. 19 perfectly remembers that Mahendra Singh worker of respondent No. 1 distributed Ext. I and III, but he does not remember who distributed leaflets on behalf of the Congress. His evidence also does not appear to be reliable. P.W. 52, P.W. 54, P.W. 55 and P.W. 58 are members of Bihar Legislative Assembly and belong to the districts of Palamow, Darbhanga, Darbhanga and Saran respectively. They were working on behalf of the Congress candidate in the bye-election in Fatwa Constituency. Their evidence shows that the leaflet, Ext. I, was distributed in Fatwa Bazar by Socialist workers. P.W. 54 and P.W. 55 have also deposed about the distribution of the booklet, Ext. III. P.W. 52 and P.W. 58 do not name the distributor. P.W. 54 and P.W. 55 say that on inquiry they learnt that Mahendra Singh was the distributor, but they cannot say the name of the informant. The evidence of those four witnesses, at best, shows that the leaflet, Ext. I, was distributed in Fatwa Bazar, but it does not help the petitioner in proving that Mahendra Singh was the distributor. P.W. 59 says in his evidence that he saw the distribution of the leaflet in Fatwa Bazar by Mahendra Singh on 30th May, 1953. This is not the case of the petitioner in the election petition. The witness further says that he also saw the distribution in Fatwa Bazar on 2nd, 5th and 6th June by Mahendra Singh. We are not impressed with the evidence of this witness. P.W. 60, P.W. 61, P.W. 62 and P.W. 73 are not residents of Fatwa Bazar and their evidence regarding distribution of the leaflet there does not appear to be reliable. P.W. 60 and P.W. 73 have not named the distributor. P.W. 86, who belongs to another village, Sarthua, says that he was residing at Fatwa in connection with his grain business at the time of the bye-election. But from his cross examination it appears that his business had come to an end a month or two before the bye-election. It is, therefore, doubtful that he was present at Fatwa bazar at or about the time of the bye-election. His statement that he saw Mahendra Singh distributing Exts. I and III does not appear to be reliable. Further, the witness has said that Gaurishanker of Nohta also distributed Exts. I and III in Fatwa Bazar. This is not the case of the petitioner as set out in the List, annexed to the election petition. The evidence produced by the petitioner, is, thus, not sufficient and reliable to prove the alleged distribution of the leaflet by Mahendra Singh in Fatwa Bazar. The circumstance pointed above, that only a few Harijans lived in Fatwa Bazar, makes the story of extensive publication in that locality of the leaflet, which was only intended for the Harijans, extremely improbable.

On behalf of the respondent, R.W. 9 (Dwarika Nath Tiwari of Fatwa), R.W. 11 (Raghunath Prasad of Fatwa), R.W. 13 (Abdul Sattar of Fatwa), R.W. 14 (Sukhdeo Das of Fatwa), R.W. 26 (Mahendra Singh of Fatwa Bazar), R. W. 35 (Ram Prasad Lal of Fatwa), R.W. 40 Prayag Lal of Sora Koti), R.W. 47 (Ram Babu Prasad), R.W. 65 (Radha Mohan Rai), R.W. 67 (Ramcharam Singh), R.W. 69 (Sheo Bhajan Singh) and R.W. 70 (respondent No. 1) have deposed denying the distribution of the leaflet in Fatwa Bazar. It may be mentioned that Mahendra Singh (R.W. 26), who belongs to Fatwa Bazar and who is Yadav by

caste, has denied that he distributed the leaflet. The petitioner contends that it was not this Mahendra Singh who distributed the leaflet. But it was another Mahendra Singh, Rajput by caste, son of Ram Hari Singh, who was the distributor. The confusion about Mahendra Singh arose because, in the List, full particulars of the alleged distributor were not given. Mahendra Singh Rajput, son of Ram Hari Singh, has not been examined on behalf of the respondent, but the petitioner can not take advantage of this fact because he has failed to produce reliable and convincing evidence that Mahendra Singh, son of Ram Hari Singh, distributed the leaflet.

Even assuming that Mahendra Singh distributed the leaflet, it has not been established that he was polling agent of respondent No. 1. The best evidence, namely, Polling Agent Form, showing the appointment of Mahendra Singh as polling agent has not been produced. The petitioner's witnesses, who have been examined to prove the alleged distribution, have only said that Mahendra Singh was a worker. Two witnesses, P.W. 90 and P.W. 91, have tried to prove that Mahendra Singh was a polling agent of respondent No. 1 in Fatwa Union Board polling station. P.W. 90 is a clerk in S. D. O's office at Dinapore. He says that he was employed as polling officer at Fatwa Union Board polling station. P.W. 91 is a clerk in the Collector's office at Patna and he also claims to have been polling officer at Fatwa Union Board polling station. The witnesses came to depose after a pretty long time from the date of bye-election and, in the absence of the Polling Agent Form, we are not prepared to rely upon their statements.

Similarly, there is no Polling Agent Form in regard to Gaurishanker Yadav, who is alleged to have distributed the leaflet at Nohta. The petitioner's witnesses, who have deposed about the distribution of the leaflet, have only said that Gaurishanker was a Socialist worker or a worker of respondent No. 1. P.W. 90 has no doubt, tried to prove that Gaurishanker was polling agent of respondent No. 1 at Fatwa Union Board polling station. But his evidence, as discussed above cannot be relied upon.

The conclusion, therefore, is that the petitioner has failed to establish that the leaflet, Ext. I, was published at Nohta and Fatwa Bazar by Gaurishanker Yadav and Mahendra Singh polling agents of respondent No. 1.

PUBLICATION AT SINGARIAWAN

The petitioner's allegation is that Ramdas Yadav of Singariawan, polling agent of respondent No. 1, distributed the leaflet, Ext. I, in that village on 1st June to 6th June, 1953. The petitioner's witnesses examined on this point are P.W. 4 (Nathun Singh of Singariawan), P.W. 5 (Mathura Ram of Singariawan), P.W. 7 (Ramcharitra Singh of Singariawan), P.W. 11 (Iswarchand of Arai) and P.W. 51 (Debi Prasad Mahton). P.W. 4 (says that he saw distribution of two leaflets, Ext. I and II, in his village two days before the poll (i.e. on 5th June 1953). According to him, not only Ramdas Yadav but also two other persons, namely, Deonandan Yadav and Sonu Das, were distributing the leaflets on behalf of respondent No. 1. But, according to the List, Deonandan distributed only Ext. III and that at Kajibigha, and not at Singariawan. Sonu Das, according to the List, distributed Ext. II at Kajibigha and did not distribute any leaflet at Singariawan. The evidence of this witness is, thus, in conflict with the case set up in the election petition. From his evidence it appears that he saw the distribution of the leaflets in Harijan tolla when he was passing by that way. He, however, did not stop there and no leaflet was given to him. His evidence that leaflets similar to Exts. I and II were being distributed is, therefore, of doubtful nature. Further, it may be noted that the evidence of this witness regarding voters of Kajibigha being conveyed to Singariawan polling station in the bullock cart of Ramkhalawan Singh has not been accepted. The evidence of this witness regarding distribution of the leaflet, Ext. I, for all these reasons, cannot be relied upon. P.W. 5 has deposed that the leaflet, Ext. I, was distributed by Ramdas on 4th to 6th June, 1953. He says that on the first day he saw the distribution in the eastern part of the village where he lives. From his evidence it appears that the Harijans of the village live in the southern part of the village. So, it is highly improbable that the leaflet which was solely intended for the Harijan, should have been distributed in the eastern part of the village. Then, he says that on the second day he saw the distribution in the southern part of the village. He did not speak to any person about his receiving the leaflet. He does not remember the contents of the leaflet. His evidence regarding distribution does not appear to be impressive. P.W. 7 has made some improvement in the story set up in the election petition by saying that Ramdas and Deonandan distributed two kinds of leaflets, Exts. I and II, in a meeting held at Singariawan on 2nd June, 1953; respondent No. 1 was present in that meeting and he also spoke about the distribution of the leaflets. From the election petition it does not appear that respondent No. 1 took any such active steps in the matter of distribution of the

leaflets. Further, according to the List, Deonandan was responsible for distribution of the booklet, Ext. III only, and that at Kajibigha, but the witness has added the name of Deonandan as one of the distributors at Singariawan. The evidence of this witness regarding conveyance of voters of Kajibigha to Singariawan polling station in the bullock cart of Ramkhelawan has not been believed. For all these reasons, we are not prepared to accept the evidence of this witness regarding the distribution of the leaflet. P.W. 51, who is the Chairman of the District Board of Bhagalpore and who claims to have done canvassing for the Congress candidate in the bye-election, says that he had visited Singariawan two days before the poll and found the worker of respondent No. 1 distributing the leaflets which were exactly similar to Ext. I. He, however, cannot give the name of the distributor. His evidence, at best, shows that the leaflet was distributed at Singariawan, but it does not establish that the distributor was Ramdas Yadav. From the evidence of P.W. 5 it appears that there were about 200 Harijan voters at Singariawan. The leaflet, Ext. I, which was intended for the Harijans, might have been distributed at Singariawan, but the petitioner, as discussed above, has failed to establish that such distribution was made by Ramdas Yadav.

It is also significant that there is no satisfactory evidence that the alleged distributor, Ramdas Yadav, was a polling agent of respondent No. 1. There is no Polling Agent Form showing the appointment of Ramdas as a polling agent of respondent No. 1. The oral evidence of P.W. 5 on this point cannot be accepted in the absence of the documentary evidence.

On behalf of the respondent, Ramdas Yadav (R.W. 22), the alleged distributor, has stated on oath that he was not a polling agent of respondent No. 1 and had not distributed any leaflet on his behalf. Another witness, Indrajit Rai of Singariawan (R.W. 18) has also deposed to the same effect.

We, therefore, find that the petitioner has failed to establish the publication of the leaflet, Ext. I, at Singariawan by Ramdas Yadav, polling agent of respondent No. 1.

PUBLICATION AT ARAI

The petitioner's case is that Amrit Singh of Arai, polling agent of respondent No. 1, distributed the leaflet, Ext. I, in that village on 1st to 6th June, 1953. Three witnesses, namely, P.W. 3 (Chandrika Prasad Singh of Arai), P.W. 11 (Iswardhan of Arai) and P.W. 51 (Debi Prasad Mahton), have been examined by the petitioner on this point. P.W. 3 says that leaflets, Exts. I and III, had been distributed at Arai from 3rd to 5th June, 1953 by Amrit Singh, Ramjatan Singh and Bindeshwari Singh, workers of respondent No. 1. Ramjatan Singh and Bindeshwari Singh have not been named as distributors in the List, annexed to the election petition. The witness makes another improvement in the story by saying that on 5th June the leaflets were distributed in a meeting which was attended by respondent No. 1. This witness, as will appear from his evidence, distributed a leaflet on behalf of the Congress candidate, but he does not remember the heading of that leaflet. The evidence of this witness regarding conveyance of voters of Arai to Singariawan polling station in the bullock carts of Chhatu Gope and Keshwar Mahton has already been rejected. We are, for these reasons, unable to rely upon the evidence of this witness. P.W. 11 says that he saw Amrit Singh distributing the leaflet, Ext. I, and the booklet, Ext. III, on 6th June and got one copy of each from him. He has produced the leaflet before the Tribunal; it has been marked Ext. I-2. The evidence of this witness shows that he was polling agent of the petitioner in the bye-election and had also worked for him in the general election. He, thus, appears to be an interested witness. His evidence regarding conveyance of voters in bullock carts, as discussed above, has already been disbelieved. We, therefore, do not consider it safe to rely upon his evidence. P.W. 51 says that two days before the poll (i.e., on 5th June) he saw a worker of respondent No. 1 distributing leaflets, exactly similar to Ext. I, at Arai, but he cannot give the name of the distributor. The evidence of this witness is, therefore, not of much help to the petitioner, there is, thus, no satisfactory evidence to prove the alleged distribution of the leaflet by Amrit Singh. Further, it has not been proved that Amrit Singh was a polling agent of respondent No. 1. The Polling Agent Forms on the record do not show the name of Amrit Singh as such polling agent.

Amrit Singh (R.W. 20) has, on the other hand, denied that he was a polling agent of respondent No. 1 and that he distributed any leaflet on his behalf. His evidence shows that he has been employed as Gumastha of Chhedi Lal Basudeo Prasad at village Muzafara for the last 16 years and that he was at Muzafara during the period of 10 days before the poll and he visited his home only on the date of poll. Sri Rai of Arai (R.W. 23), who is a neighbour of Amrit Singh, has

corroborated his statement. In conclusion, we find that the petitioner has also failed to prove the publication of the leaflet at Arai as alleged by him.

PUBLICATION AT CHAKRAJA

The petitioner alleges that Sonu Das of Chakraja, polling agent of respondent No. 1, distributed the leaflet, Ext. I, in that village on 1st June, 1953. The witnesses to prove the alleged distribution are P.W. 8 (Ramswarup Paswan of Barki Kabai), P.W. 24 (Chitnarayan Singh of Chakraja), P.W. 51 (Debi Prasad Mahton) and P.W. 82 (Rambrich Singh of Chakraja). P.W. 8 is a student residing in a different village. We are not impressed with his evidence that he saw Sonu Das distributing the leaflet, Ext. I, at Chakraja on 6th June, 1953, when he had visited that village to get a book from his school mate. P.W. 24 claims to have got the two leaflets, Exts. I and III, that had been distributed by Sonu Das, but he did not show the leaflets or speak about them to any person in the village. The evidence of this witness regarding conveyance of voters of his village in the bullock cart of Gopi Mahton has not been accepted. We are also not impressed with his evidence regarding distribution of the leaflets. The evidence of P.W. 51 is not much help to the petitioner because he cannot name the distributor. P.W. 82 says that Sonu Das distributed Exts. I and III at Chakraja on 1st June 1953. He says further that he got those leaflets; but he has not produced them. He also does not appear to be a reliable witness and his evidence regarding conveyance of voters in the bullock cart of Gopi Mahton has already been rejected. There is, thus, no reliable evidence to prove the alleged distribution of the leaflet by Sonu Das. Further, it has not been established that Sonu Das was a polling agent of respondent No. 1. None of the petitioner's witnesses has pledged his oath on this point; the witnesses have simply said that Sonu Das was a worker. The Polling Agent Forms on the record do not show the name of Sonu Das as a polling agent.

It has been urged on behalf of the petitioner that the respondent has not examined any resident of Chakraja to deny the allegation about distribution of the leaflets there. This fact cannot improve the petitioner's case when there is no reliable and satisfactory evidence to establish the alleged distribution of the leaflets by Sonu Das.

We, therefore, find that the petitioner has also failed to prove the alleged distribution of the leaflet at Chakraja by Sonu Das, polling agent of respondent No. 1.

PUBLICATION AT GULMAHIABAG

The petitioner's case is that Rambilas Singh, alias Chhotey Lal, of Gulmahia-bag; polling agent of respondent No. 1, distributed the leaflet in that village on 1st June to 6th June, 1953. Only two witnesses, namely P.W. 41 (Ramlakhan Singh of Sheikhpore) and P.W. 42 (Parmanand Singh of Laskarichak) have been examined by the petitioner to prove the alleged distribution. P.W. 41 says that on 7th June, 1953, he had visited Gulmahia-bag to take medicine from Rambilas, alias Chhotey Lal, who is a Homoeopathic doctor, when he saw him distributing the leaflet, Ext. I, in the village. The story of this witness regarding his visit to Gulmahia-bag has been disbelieved, while dealing with the allegation of conveyance of voters in a motor truck. Further, it is not the case of the petitioner that the leaflet was distributed at Gulmahia-bag on 7th June, 1953. The evidence of this witness cannot, therefore, be relied upon. P.W. 42, who claims to have worked for the Congress candidate in the bye-election, says in his evidence that he visited Gulmahia-bag to do canvassing on 5th June, 1953 when he saw Rambilas distributing leaflets, exactly similar to Ext. 1. From the cross-examination of the witness it appears that he was doing the work of canvassing of his own accord without being asked by any body to do such work. He cannot name the voters approached by him, excepting two persons, Bhagwan Sahay and Siaram Singh, who, according to the petitioner's evidence were taking prominent part in the election on behalf of the rival candidate, respondent No. 1. His story of canvassing at Gulmahia-bag does not appear to be credible. From the evidence of the respondent's witnesses Nos. 6, 7 and 10 belonging to village Gulmahia-bag, it appears that no Harijan lives in that village. This statement is corroborated by the Electoral Roll (Ext. B). It is, therefore, extremely improbable that the leaflet, Ext. I, which was addressed to the Harijans, should have been distributed in that village. It is noteworthy that not a single resident of Gulmahia-bag has been examined by the petitioner. The petitioner has, thus, failed to prove the distribution of the leaflet at Gulmahia-bag.

On behalf of the respondent, R.W. 7 (Sitab Lal of Gulmahiabag), R.W. 8 (Rameshwar Singh of Gulmahiabag), R. W. 10 (Bhagwan Sahay of Gulmahiabag) and R.W. 17 (Rambilas of Gulmahiabag) have denied the alleged distribution of the leaflet. R.W. 17 further denies that he was the polling agent of respondent No. I. On behalf of the petitioner, P.W. 22 (Masud Alam) has deposed that Rambilas was the polling agent. Two polling Agent Forms in regard to Rambilas Singh, who was appointed a polling agent of respondent No. 1, for Moujipore polling station, are on the record; they are Exts. 14 and 30. In these documents, the *alias* name, Chhotey Lal, of Rambilas Singh has not been written. Rambilas (R.W. 17) has stated in his evidence that the Polling Agent Forms do not bear his signature. It has been contended by the respondent that another Rambilas, belonging to village Budhuchak, was his polling agent. Udit Prasad (R.W. 48), who was also a polling agent respondent No. 1 at Moujipore polling station, has stated in his evidence that, besides himself, Rambilas Singh and Dwarika Prasad of Budhuchak were also the polling agents of respondent No. 1. He has also stated that the Polling Agent Forms bear the signature of Rambilas Singh of Budhuchak. Rambilas of Budhuchak has not been examined in this case, but the respondent has produced in evidence certain documents of Fatwa High English School (Exts. Y, Z and Z1), containing signatures of Rambilas Singh of Budhuchak. It has been urged that the signatures in these documents and the signatures on the Polling Agent Forms are of one and the same person. It is needless to give a finding regarding these signatures, but, in view of the sworn testimony of R.W. 17 and R.W. 48, we are unable to hold that Rambilas of Gulmahiabag was the polling agent of respondent No. I. Our conclusion is that the petitioner has failed to establish the distribution of the leaflet at Gulmahiabag by the polling agent of respondent No. I as alleged.

PUBLICATION AT BARAI KALAN

According to the List, Surendra Prasad Singh of Barai Kalan, polling agent of respondent No. I, distributed the leaflet, Ext. I, in that village on 1st to 6th June, 1953. The petitioner's witnesses on this point are P.W. 30 (Jagdevan Singh of Kharphur), P.W. 31 (Ramdevan Singh of Barai Kalan), P.W. 34 (Sheo Balak Singh of Barai Kalan), P.W. 36 (Lakshmi Narayan of Kharphur) and P.W. 60 (Ram Chandar Singh of Kiranehak). P.W. 30 does not belong to Barai Kalan and he says that he visited that village on 3rd June, 1953 to attend a meeting when he saw Surendra Prasad Singh distributing the leaflet, Ext. I, in that meeting. His evidence shows that Sheo Mahadeo Babu (respondent No.1) was also present in that meeting. The story of distribution in presence of respondent No. I is an improvement in the case of the petitioner as set out in the election petition. We are not impressed with the evidence of this witness. P.W. 31 also says that Surendra Prasad Singh distributed leaflets in a meeting attended by respondent No. 1. According to him, two kinds of leaflets, exactly similar to Ext. I and II, were distributed. But P.W. 30 speaks of distribution of only one kind of leaflet namely, Ext. I. P.W. 34 also speaks of distribution of two kinds of leaflets, Exts. I and II, 5 or 6 days before the poll. His evidence shows that Surendra Prasad Singh is Kurmi by caste and that 10 or 12 families of Kurmis live in village Barai Kalan. From the evidence of R.W. 51 it appears that, of the different castes, Kurmis are in majority in village Barai Kalan. It is not likely that Surendra Prasad Singh should have carried such a vigorous propaganda against a member of his caste in a village where his castemen were in majority. P.W. 36 belongs to a different village and his evidence that he saw Surendra Prasad distributing leaflets in a meeting on 3rd June, 1953, does not appear to be reliable. He also attended a meeting convened by the Congress workers at Usfa and also got a leaflet that was distributed on behalf of the Congress, but he does not remember either the date of the meeting or the date of his receiving the Congress leaflet. P.W. 60 also belongs to another place and he claims to have visited Barai Kalan on 6th June to work for the Congress candidate. He also claims to have seen the distribution of the leaflets, Ext. I and II, by Surendra Prasad Singh. We are not impressed with the evidence of this witness.

On behalf of the respondent, R.W. 51 and R.W. 52, who are residents of Barai Kalan, have deposed that Surendra Prasad Singh was working for the petitioner in the bye-election and that leaflets, like Ext. I, II and III, were not distributed in their village on behalf of respondent No. I. R.W. 51 has definitely denied that Surendra Prasad did any work for respondent No. I. There is no Polling Agent Form in the name of Surendra Prasad Singh, nor is there any trust-worthy evidence on behalf of the petitioner showing that Surendra Prasad was a polling agent of respondent No. I. Upon consideration of the evidence on the record, we find that the petitioner has also failed to prove the distribution of the leaflet, Ext. 1, at Barai Kalan by the polling agent of respondent No.1.

PUBLICATION AT MOHIUDDINPORE

The petitioner's allegation is that Ragho Yadav of Mohiuddinpore, polling agent of respondent No. 1, distributed the leaflet, Ext. I, at Mohiuddinpore on 1st to 6th June, 1953. The petitioner's witnesses who have been examined on this point, are P.W. 2 (Kesho Prasad of Rusulpore), P.W. 21 (Baldeo Singh of Kanchanpore) and P.W. 35 (Rajendra Prasad Singh of Sirpatpore). P.W. 2 was working for the petitioner in the bye-election. He had filed nomination paper in that election as a dummy Congress candidate and, subsequently, withdrew his nomination on acceptance of the nomination of the petitioner. He claims to have visited Mohiuddinpore and several other villages where he saw distribution of leaflets on behalf of respondent No. 1. He says that he got leaflets, exactly similar to Ext. I, at Mohiuddinpore and Narma. At Narma, one Brijnandan Singh was distributing the leaflet on 3rd June, 1953 and at Mohiuddinpore, Ragho Prasad Singh Yadav, worker of respondent No. 1, was distributing the leaflet on the same day. He has produced one of the leaflets [Ext. I(1)] obtained by him. In his examination in chief he says that the leaflets [Ext. I(1)] was given to him by Brijnandan Singh at Narma. But in the cross examination he says that the leaflets which he got at Narma was handed over by him to Ramkhelawan Singh who was election incharge of the Congress in Fatwa bye-election. He further says in his cross examination that the leaflet which he has filed before the Tribunal was obtained by him at Mohiuddinpore. He has, thus, made conflicting statements regarding the leaflet Ext. I(1). He appears to be an unreliable and interested witness and his anxiety to support the petitioner is manifest from his statements regarding distribution of the leaflet at Narma and Bibipore. In his examination in chief he says that he found Kamleshwari Yadav, worker of respondent No. 1, distributing the leaflet among the Harijans of Bibipore. But from his cross examination it appears that he did not see Kamleshwari Yadav distributing the leaflet at Bibipore, but heard about such distribution from other persons. From his cross examination it further appears that he did not know Brijnandan Singh before the date of distribution. It is not clear from his evidence how he learnt that the distributor was Brijnandan Singh. For all these reasons, we do not consider it safe to rely upon the evidence of this witness. P.W. 21 belongs to another village. He says that he visited Mohiuddinpore on 4th June 1953 to attend a meeting held there on behalf of respondent No. 1 and he saw Ragho Yadav, a worker of respondent No. 1, distributing leaflets, Exts. I and III, in that meeting. The witness, as will appear from his cross examination, has tried to conceal some facts which, we think, were known to the people of that locality. The petitioner had been elected from Fatwa constituency at the general election held in January, 1952 and he was a Minister in the State Government at the time of the bye-election in June, 1953. The witness says that he did not know who was really the Congress candidate, nor did he know that Deosaran Babu (Petitioner) was a minister at the time of the bye-election. He has also come forward to support the case of the petitioner that some voters of his village did not cast their votes as Ragho Babu (Respondent No. 2) was also claiming votes as a Congress candidate. It has been discussed above that this is an absurd case, for Ragho Babu was an independent candidate and his symbol was "pitcher", while Deosaran Babu was a Congress candidate, his symbol being "Yoked Bullocks". We are not impressed that P.W. 21 is a truthful witness. P.W. 35 also belongs to another village. He says that he saw Ragho Yadav, worker of respondent No. 1, distributing the leaflet at Mohiuddinpore on 5th June, 1953. He also does not appear to be an independent witness. He was polling agent of the petitioner at Usfa polling station. He also supports the absurd case of the petitioner regarding Ragho Babu's claiming votes as a Congress candidate. The evidence produced by the petitioner is, thus, far from being satisfactory. It is noteworthy that not a single person of village Mohiuddinpore has been examined on behalf of the petitioner. There is also no evidence at all showing that Ragho Yadav was a polling agent of respondent No. 1. There is no Polling Agent Form in the name of Ragho Yadav.

On behalf of the respondent, Ragho Yadav (R.W. 19) has been examined. He has denied that he did any work for respondent No. 1 in the bye-election or distribute leaflets, Exts. I and III. From his evidence it appears that he was at village Kanti in the district of Gaya, in connection with the marriage of his relation from 31st May, 1953 to 6th June, 1953.

In view of the evidence on the record, we find that the petitioner has failed to prove that the leaflet, Ext. I, was published at Mohiuddinpore by the polling agent of respondent No. 1 as alleged.

PUBLICATION AT NARMA

The petitioner's case is that Brijnandan Singh of Narma, polling agent of respondent No. 1 distributed the leaflet, Ext. I, at Narma on 1st to 6th June, 1953.

The petitioner's witnesses on this point, are P.W. 2 (Kesho Prasad of Rusulpore), P.W. 59 (Sita Ram Keshari of Dinapore) and P.W. 84 (Sheonarayan Singh of Sirpatpore). No witness of Narma has been examined by the petitioner. The evidence of P.W. 2, has been discussed in connection with the alleged distribution of the leaflet at Mohiuddinpore and has been found to be unreliable. P.W. 59 speaks of the distribution at Narma on 1st June, 1953. He cannot give the name of the distributor and so his evidence is not of much help to the petitioner. P.W. 84 speaks of the distribution three days before the poll (i.e. on 4th June). From his cross examination it appears that he visited Narma that day to call one Vaid to examine his son who was ill. His story that he waited for half an hour on the way, while going to the Vaid, to see the distribution of the leaflet does not appear to be credible. There is also no evidence to show that Brijnandan Singh was a polling agent of respondent No. 1. The Polling Agent Forms on the record do not show his name as a polling agent.

On behalf of the respondent, Parmeshwar Prasad Yadav of Dostmohamadpore (R.W. 34) has denied the distribution of the leaflet at Narma. He is not a resident of Narma and so his evidence of denial may not be acceptable. Another witness, Raghunandan Prasad of Mohiuddinpore (R.W. 66), has deposed that Brijnandan Singh of Narma was working for the Congress in the bye-election and had visited his village which is at a short distance from Narma.

From the evidence on the record it appears that Harijans reside in Narma and so it is possible that the leaflet, Ext. I, might have been distributed in that village. But the petitioner cannot succeed unless he shows that distribution was made by Brijnandan Singh, polling agent of respondent No. 1. This, the petitioner has failed to establish.

PUBLICATION AT BIBIPORE

It is stated in the List that Kamleshwari Yadav of Bibipore polling agent of respondent No. 1, distributed the leaflet, Ext. I, at Bibipore on 1st June to 6th June, 1953. The witnesses examined by the petitioner on this point are P.W. 2 (Kesho Prasad of Rusulpore), P.W. 9 (Chandeshwar Paswan of Maksudpore), P.W. 25 (Jagat Narayan Singh of Saidanpore), P.W. 43 (Deokali Dusadh of Abdulachak), P.W. 48 (Sakti Kumar M.L.A.) and P.W. 57 (Narsingh Singh of Andari). P.W. 2's evidence has already been dealt with. He admits in his cross-examination that he had not seen Kamleshwari Yadav distributing the leaflet at Bibipore. P.W. 9 belongs to another village and he says that he had visited Bibipore, where his father has *nanihal*, two days before the poll, when he saw a man of Socialist Party distributing the leaflet, Ext. I. From his evidence it appears that he does not know that man and cannot say his name. His evidence, therefore, is of little value to the petitioner. P.W. 25 also belongs to another village and he claims to have seen Kamleshwari along with some boys singing songs and distributing the leaflets, Exts. I and III. This witness was a worker of the petitioner in the bye-election. He has not produced the leaflet and the booklet which, he says, he got at the time of distribution, but still he remembers the contents thereof and says that the leaflets were exactly similar to Exts. I and III. From his cross examination it appears that he also got a leaflet, that was distributed on behalf of Ragho Babu (respondent No. 2), and another leaflet, that was distributed on behalf of the Congress, but he does not remember the contents of those leaflets. We are not impressed with the evidence of this witness. P.W. 43 is also a resident of another village. He says that he visited Bibipore 4 days before the poll and saw Kamleshwari Yadav distributing the leaflet, Ext. I. He has not explained what was the purpose of his visit to Bibipore. From his cross examination it appears that the Congress also distributed leaflets and he got one, but he does not remember who gave him that leaflet. The evidence of this witness does not appear to be reliable. P.W. 48 says that he saw Kamleshwari Yadav distributing the leaflet, Ext. I, at Bibipore on 2nd June, 1953. From his cross examination it appears that he did not know Kamleshwari before that day. His evidence that Kamleshwari was distributing the leaflet does not appear to be dependable. P.W. 57, who also belongs to another village, says that he saw Kamleshwari distributing Exts. I and III at Bibipore on 4th June 1953. This witness worked for the petitioner not only in the general election but also in the bye-election; he was proposer in one of the nomination papers of the petitioner in the bye-election. Although he speaks about the distribution of Exts. I and III by Kamleshwari Yadav, it appears from his cross examination that he did not get those leaflets from Kamleshwari, but he got them from some body else, whose name he cannot say. The evidence of this

witness also does not appear to be dependable. It is noteworthy that not a single witness of Bibipore has come forward to say about the distribution of the leaflet there. On the other hand, R.W.58 (Rajeshwar Prasad), a resident of Bibipore, has denied the distribution of the leaflet in his village.

There is also no satisfactory evidence to prove that Kamleshwari Yadav was a polling agent of respondent No. 1. The Polling Agent Forms on the record do not show the name of Kamleshwari Yadav as such polling agent. From the evidence of R.W. 54 and R.W. 58, it appears that, at Bibipore, there are two persons bearing the name Kamleshwar or Kamleshwari and that both of them are Yadav by caste. One is Kamleshwari Yadav, son of Shoonandan Yadav, and another is Kamleshwar Prasad Singh, son of Sri Ram Singh. The latter is engineer and is now in service in West Bengal. It is not clear from the petitioner's evidence that Kamleshwar Prasad engineer was the distributor as contended by him. P.W. 77 (Lakhan Lal Sinha), who was the Presiding Officer of Saidanpore polling booth, to which Bibipore appertained, has said that one Kamleshwar Prasad was the polling agent of the Socialist candidate (i.e., respondent No. 1) at booth No. 2 of Saidanpore. From his evidence it appears that this Kamleshwar had been prosecuted for tampering with ballot boxes of that booth. His statements are corroborated by his diary (Ext. 10) and also by Ext. 28(a), which is the certified copy of the charge framed by the magistrate. R.W. 58, brother of Kamleshwar Prasad engineer, admits in his cross examination that his brother had been prosecuted for alleged tampering of ballot boxes. So although there is some evidence that Kamleshwar Prasad Engineer was the polling agent, there is no satisfactory proof of the fact that the person alleged as distributor in the election petition was the polling agent of respondent No. 1.

In conclusion, we find that the petitioner has also failed to establish the distribution of the leaflet, Ext. I, at Bibipore by the polling agent of respondent No. 1.

Next, we propose to deal with the evidence regarding publication of the leaflet, Ext. II, in different villages.

PUBLICATION AT HAJIPORE

The petitioner alleges that Kirpa Singh Yadav of Hajipore, polling agent of respondent No. 1, distributed the leaflet, Ext. II, in that village on 2nd June to 7th June, 1953. There is no evidence on behalf of the petitioner to prove such distribution. On the other hand, Kirpa Singh (R.W. 2) has denied that he was the polling agent of respondent No. 1 or that he had distributed the leaflet.

PUBLICATION AT SINGARIAWAN

From the List, appended to the election petition, it appears that Ramdas Yadav of Singariawan distributed not only the leaflet, Ext. I, but also the other leaflet, Ext. II at Singariawan. It is alleged that he distributed Ext. II on 2nd June to 7th June 1953. P. W. 4 (Nathun Singh of Singariawan) and P. W. 7 Ramcharitra Singh of Singariawan) have deposed on this point. Their evidence shows that the two leaflets, Exts. I and II, were distributed simultaneously. Their evidence has already been dealt with in connection with the distribution of Ext. I and has been found to be insufficient and unreliable. On behalf of the respondent R.W. 18 (Indrajit Rai of Singariawan) and R.W. 22 (Ramdas Yadav of Singariawan) have denied the alleged distribution.

PUBLICATION AT KANCHANPORE

The petitioner has alleged that Shiva Yadav of Kanchanpore, polling agent of respondent No. 1, distributed the leaflet, Ext. II, at Kanchanpore on 2nd June to 7th June, 1953. The petitioner's witnesses, examined on this point, are P.W. 21 (Baldeo Singh of Kanchanpore) and P.W. 49 (Manohar Singh of Kanchanpore). P.W. 21 says that Shiva Yadav, worker of respondent No. 1, distributed leaflets exactly similar to Ext. II, at Kanchanpore from 1st to 6th June, 1953. It is not alleged in the election petition that Ext. II was distributed on 1st June. According to this witness, Shiva Yadav was distributing Ext. II only. But from the evidence of P.W. 49, who also belongs to Kanchanpore, it appears that Shiva Yadav was distributing two kinds of leaflets, Exts. II and III. P.W. 49 has said in his evidence that the leaflets were distributed everyday under a peepal tree in Mushahartolla. This does not seem to be believable. There is, thus, no consistent and reliable evidence on behalf of the petitioner to prove the alleged distribution. It is also noteworthy that there is no good evidence to prove that Shiva Yadav was a polling agent of respondent No. 1; there is no Polling Agent Form

in his name. On the contrary, R.W. 50 (Fagu Lal Singh of Kanchanpore) has stated in his evidence that there is no person by the name of Shiva Yadav in his village. We therefore, find that the petitioner has failed to establish that Shiva Yadav, polling agent of respondent No. 1, distributed the leaflets, Ext. II, at Kanchanpore.

PUBLICATION AT ASLAMPORE KHANPORE (NARMA)

According to the election petition, the leaflet, Ext. II, was distributed in this village on 2nd to 7th June, 1953, by Manna Tiwary of Aslampore Khanpore (Narma), polling agent of respondent No. 1. The only witness on this point is P.W. 35 (Rajendra Prasad Singh of Sirpatpore). He says that he saw distribution of Ext. II at Narma on 3rd June, 1953, by Manna Tiwari worker of respondent No. 1. His evidence has already been dealt with in connection with the distribution of Ext. I at Mohiuddinpore and has been found to be undependable. There is also no satisfactory evidence to prove that Manna Tiwari was a polling agent of respondent No. 1.

PUBLICATION AT DARIAPORE

The petitioner alleges that Parmanand Mishra of Dariapore, polling agent of respondent No. 1, distributed the leaflet (Ext. II) in that village on 2nd to 7th June, 1953. There is no evidence at all on behalf of the petitioner to prove the alleged distribution by Parmanand Mishra, nor is there any satisfactory evidence showing that Parmanand Mishra was a polling agent of respondent No. 1.

PUBLICATION AT KAJIBIGHA

Sonu Das of Kajibigha, polling agent of respondent No. 1, is alleged to have distributed the leaflet (Ext. II) in that village on 2nd June to 7th June, 1953. There is also no evidence on behalf of the petitioner to prove the alleged distribution by Sonu Das, nor is there any good evidence to show that Sonu Das was a polling agent of respondent No. 1.

PUBLICATION AT BARAI KALAN

Surendra Prasad Singh, polling agent of respondent No. 1, is alleged to have distributed both the leaflets, Exts. I and II, at Barai Kalan. Ext. II is alleged to have been distributed by him on 2nd to 7th June, 1953. The evidence of the petitioner's witnesses, P.W. 31, P.W. 34, P.W. 36 and P.W. 60, has already been dealt with in connection with the alleged distribution of Ext. I. We find that there is no reliable evidence to prove the alleged distribution of Ext. II by Surendra Prasad Singh at Barai Kalan, nor is there any satisfactory evidence to show that Surendra Prasad Singh was a polling agent of respondent No. 1.

PUBLICATION AT SAIDANPORE

The petitioner alleges that Alakh Singh of Saidanpore, polling agent of respondent No. 1, distributed the leaflet, (Ext. II) at Saidanpore on 2nd to 7th June, 1953. The petitioner's witnesses on this point are P.W. 25 (Jagat Narayan Singh of Saidanpore), P.W. 26 (Tribhuvan Singh of Saidanpore), P.W. 46 (Dwarika Prasad Singh of Rupas) and P.W. 78 (Ramjatan Singh of Saidanpore). From the evidence of P.W. 25 it appears that Alakh Singh, worker of respondent No. 1, distributed the leaflet, Ext. II, at Saidanpore from 2nd to 6th June, 1953. He got one such leaflet, but he made it over to Ramdular Singh of Saidanpore who was worker of the petitioner. The witness, therefore, was not in a position to produce the leaflet before the Tribunal and his statement that the contents of the leaflet, which he got, were exactly similar to the contents of Ext. II, cannot be relied upon, specially in view of the fact that he does not remember the contents of another leaflet which he had got and which was distributed on behalf of the Congress. He also cannot say anything about the contents of the leaflet distribution on behalf of the respondent No. 2, which also was given to him. We are, therefore, not impressed with the evidence of this witness. P.W. 26 also does not produce the leaflet which, he says, he got at the time of the alleged distribution. From his cross examination it appears that leaflets had been distributed also on behalf of the Congress and respondent No. 2, but the memory of the witness is so weak that he cannot say if he had got those leaflets. His evidence also does not appear to be satisfactory. P.W. 46 belongs to another village. His statement that he had worked at Saidanpore on behalf of the Congress candidate in the bye-election does not appear to be believable, because he does not remember if there was any Congress worker in that locality. He says that he had no special concern with Saidanpore which was 26 or 27 miles away from his village. We are not prepared to believe his story that he visited Saidanpore

to canvass votes for the Congress candidate. His evidence, therefore, that he found Alakh Singh distributing the leaflet 5 or 6 days before the poll cannot be accepted. P.W. 78 was a polling agent of respondent No. 2, who, as already shown, was in league with the petitioner. P.W. 78 cannot, therefore, be said to be an independent witness. P.W. 78 says in his evidence that one leaflet had been distributed on behalf of Ragho Babu (Respondent No. 2) also, but he does not remember its contents. It is somewhat surprising that he fully remembers the contents of Ext. II in as much as he says that the leaflet, which he got, was exactly similar to Ext. II, he has not produced the leaflet before the Tribunal. The evidence of this witness also cannot be relied upon. There is also no convincing evidence showing that Alakh Singh was a polling agent of respondent No. 1. The Polling Agent Forms on the record do not show his name as such polling agent.

On behalf of the respondent, Rambilas Singh of Saidanpore (R.W. 24), Alakh Singh of Saidanpore (R.W. 41) and Mundrika Singh of Saidanpore (R. W. 54) have denied the alleged distribution of the leaflet. Alakh Singh has further denied that he was a polling agent of respondent No. 1.

We upon consideration of the entire evidence, find that the petitioner has failed to prove the distribution of Ext. II at Saidanpore by the polling agent of respondent No. 1.

Lastly we shall deal with the evidence regarding publication of the booklet, Ext. III, in different villages.

PUBLICATION AT KAJIBIGHA

The petitioner has alleged that Deonandon Yadav of Kajibigha, polling agent of respondent No. 1, distributed the booklet (Ext. III) in that village on 29th May to 6th June, 1953. The only witness on this point is P.W. 12 (Ramsarup Singh of Kajibigha). He says that Deonandan Yadav, polling agent of respondent No. 1, distributed the booklet, similar to Ext. III, at Kajibigha on 6th June, 1953. He has not produced the booklet which, he says, he got at the time of the alleged distribution. He does not remember if the name of the author or the price was printed on the booklet. The printed booklet (Ext. III) contains the name of the author and also the price; these things are printed on the front page. The evidence of this witness is of doubtful nature and we are not prepared to accept it. There is no Polling Agent Form showing that Deonandan Yadav was a polling agent of respondent No. 1. On behalf of the respondent, Hazari Yadav of Kajibigha (R.W. 21), Ram Bilas of Singarlawan (R.W. 22) and Deonandan Yadav of Kajibigha (R.W. 25) have denied the distribution of the booklet. R.W. 25 has also denied that he was a polling agent of respondent No. 1. We, therefore, find that the petitioner has failed to establish the publication of the booklet at Kajibigha as alleged.

PUBLICATION AT ARAI

Amrit Singh of Arai, polling agent of respondent No. 1, is alleged to have distributed the leaflet, Ext. I, as also the booklet Ext. III, in that village. The booklet is said to have been distributed on 29th May to 6th June, 1953. The witnesses examined by the petitioner on this point are P.W. 3 (Chandrika Prasad Singh of Arai) and P.W. II (Iswarchand of Arai). The evidence of these witnesses has already been discussed in connection with the alleged distribution of Ext. I at Arai. We do not consider their evidence regarding distribution of Ext. III satisfactory and convincing. There is also no satisfactory evidence to prove that Amrit Singh was a polling agent of respondent No. 1. Amrit Singh (R.W. 20) has, on the other hand, denied the allegations made by the petitioner. We hold that the petitioner has also failed to establish the alleged distribution of the booklet at Arai.

PUBLICATION AT CHAKRAJA

Sonu Das of Chakraja, polling agent of respondent No. 1, is said to have distributed the leaflet, Ext. I, as also the booklet, Ext. III, at Chakraja. The booklet is said to have been distributed on 29th May to 6th June, 1953. The petitioner's witnesses on this point are P.W. 24 (Chitnarayan Singh of Chakraja) and P.W. 82 (Rambrich Singh of Chakraja). Their evidence has already been discussed and we do not rely upon it. The petitioner has, thus, failed to prove the alleged distribution of the booklet at Chakraja and has also failed to prove that Sonu Das was a polling agent of respondent No. 1. On behalf of the respondent, Ramdeo Rai (R.W. 56) has denied that Sonu Das distributed the booklet, Ext. III, at

Chakraja. This witness is resident of Goranpore and has got cultivation in Chakraja.

Upon consideration of the evidence on the record, we find that the petitioner has also failed to prove the distribution of the booklet at Chakraja as alleged by him.

PUBLICATION AT NOHTA AND FATWA BAZAR

The petitioner alleges that the booklet, Ext. III, was distributed by Gaurishanker Yadav at Nohta and by Mahendar Singh at Fatwa Bazar on 29th May to 6th June 1953; both were polling agents of respondent No. 1. The witnesses examined by the petitioner to prove the alleged distribution at Nohta are P.W. 17, P.W. 27, P.W. 64, P.W. 85, P.W. 86, and P.W. 89. The following witnesses, P.W. 17, P.W. 18, P.W. 19, P.W. 27, P.W. 52, P.W. 54, P.W. 55, P.W. 59, P.W. 60, P.W. 73, P.W. 85 and P.W. 86 have been examined to prove the alleged distribution at Fatwa Bazar. The evidence of these witnesses has already been discussed in relation to the publication of the leaflet, Ext. I, at Nohta and Fatwa Bazar. We also find that their evidence is not sufficient and reliable to establish the publication of the booklet at Nohta and Fatwa Bazar as alleged by the petitioner.

PUBLICATION AT MOUJIPORE

According to the petitioner's allegation, Dwarika Singh of Moujipore, polling agent of respondent No. 1, distributed the booklet in that village on 29th May to 6th June 1953. The petitioner's witnesses on this point are P.W. 38 (Ramakali Prasad Singh of Gosain Math), P.W. 50 (Jagdeep Singh of Parsa), P.W. 76 (Kapildeo Sinha of Sabniwa) and P.W. 87 (Iswar Singh of Baikatpore). P.W. 38 claims to have seen the distribution of the booklet at Moujipore on 4th June 1953 when he had gone to that village where his master lived. He says that he is tehsildar of one Aftab Babu of Moujipore. He further says that he had protested to Dwarika Das about the false statement contained in the booklet. This shows that he is not a disinterested witness. He belongs to another village and we are not impressed with his evidence regarding distribution. P.W. 50 belongs to village Parsa which is four miles from Moujipore. P.W. 87 is resident of Baikatpore which is $5\frac{1}{2}$ miles from Moujipore. From the evidence of P.W. 50 and P.W. 87 it appears that they had gone to Moujipore *hat* 3 days before the poll (i.e. on 4th June) when they saw Dwarika Singh distributing the booklet. It is contended by the respondent that the *hat* of that locality is situated at Samaspore, and not at Moujipore. This contention finds support in the evidence of R.W. 12 and R.W. 28 and in the receipt (Ext. I) which is a printed receipt showing that the *hat* was situated at Samaspore in the year 1951. The statements of P.W. 50 and P.W. 87, that the booklet was distributed in the *hat* at Moujipore, cannot therefore, be accepted. P.W. 76 is a pleader practising at Barh. His evidence regarding the conveyance of voters of Gulma'habag in a truck has not been believed. We also do not consider his evidence about distribution of the booklet to be reliable and convincing. It is noteworthy that not a single witness of Moujipore has been examined by the petitioner to prove the publication of the booklet in that village. On the contrary, R.W. 12, R.W. 16, R.W. 28 and R.W. 48, all residents of Moujipore, have denied the alleged publication of the booklet in that village. R.W. 28 is Dwarika Prasad of Moujipore who, according to the petitioner, distributed the booklet. The petitioner has also failed to prove that Dwarika (R.W. 28) was a polling agent of respondent No. 1. There are two Polling Agent Forms [Ext. 25 and Ext. 30(a)] showing the name of one Dwarika Prasad Yadav as a polling agent of respondent No. 1. The respondent has examined one Dwarika Prasad Yadav of Budhuchak (R.W. 49), who claims to be one of the polling agents of Sheomahadeo Babu (Respondent No. 1) at Moujipore polling booth. He says that the signatures [Ext. L (10) and Ext. L (11)] on the Polling Agent Form [Ext. 30 (a)] are his. R.W. 28 (Dwarika Prasad of Moujipore) has, on the other-hand, denied that he had signed any Polling Agent Form for Sheomahadeo Babu. In this state of evidence, it is impossible to hold that R.W. 28, who is alleged to have distributed the booklet, was a polling agent of respondent No. 1.

The petitioner has, thus, failed to prove that the booklet was distributed at Moujipore by the polling agent of respondent No. 1 as alleged.

PUBLICATION AT SAIDANPORE

The petitioner alleges that Rambilas Singh of Saidanpore, polling agent of respondent No. 1, distributed the booklet, Ext. III, in that village on 29th May to 6th June 1953. The witnesses examined to prove the alleged distribution are P.W. 25, P.W. 26, P.W. 44, P.W. 46 and P.W. 78. The evidence of P.W. 25, P.W. 26, P.W.

46 and P.W. 78 has already been discussed above in connection with the distribution of the leaflet, Ext. II, at Saidanpore and the evidence of P.W. 44 discussed in connection with the distribution of the leaflet, Ext. I, at Dariapore. We also do not consider the evidence of the above named witnesses regarding distribution of the booklet to be reliable. It may be noted that P.W. 44 is not able to name the alleged distributor of the booklet; although, he says, he made inquiry about the distributor. The petitioner has also failed to prove that the alleged distributor, Rambilas Singh, was a polling agent of respondent No. 1. The Polling Agent Forms on the record do not show the name of Rambilas Singh as such polling agent.

On behalf of the respondent, R.W. 24, R.W. 41 and R.W. 54, all residents of Saidanpore, have denied the distribution of the booklet in that village. R.W. 24 (Rambilas Singh) has further denied that he was a polling agent of respondent No. 1.

Our finding, upon the evidence on the record, is that the petitioner has not been able to prove the publication of the booklet at Saidanpore by the polling agent of respondent No. 1 as alleged.

PUBLICATION AT HAJIPORE

According to the petitioner's allegation, Ram Prasad of Hajipore, polling agent of respondent No. 1, distributed the booklet, Ext. III, in that village on 29th May to 6th June 1953. The petitioner's witnesses on this point are P.W. 14 (Upendra Narayan Misir of Gobindpore) and P.W. 42 (Parmanand Singh of Laskarichak). P.W. 14 speaks about distribution of the booklet by Ram Prasad at Fatwa Bazar, which is not the case of the petitioner in the election petition. P.W. 42 belongs to another village, Laskarichak, and it is doubtful that he visited Hajipore and saw the distribution of the booklet there. His evidence that he was doing the work of canvassing on behalf of the Congress candidate in different villages of his own accord, without being asked by anybody to do such work, is not acceptable as has been discussed above in connection with the distribution of the leaflet, Ext. I, at Gulmahabag. The petitioner has also failed to produce convincing evidence to prove that Ram Prasad was a polling agent of respondent No. 1; there is no Polling Agent Form in his name. Ram Prasad (R.W. 4) has, on the other hand, denied that he was a polling agent of respondent No. 1 or that he distributed the booklet, Ext. III. We, therefore, hold that the petitioner has also failed to establish the distribution of the booklet at Hajipore as alleged by him.

PUBLICATION AT KANCHANPORE

Shiva Yadav of Kanchanpore, polling agent of respondent No. 1, is alleged to have distributed the booklet, Ext. III, in that village on 29th May to 6th June 1953. The petitioner's witnesses on this point are P.W. 35 (Rajendra Prasad Singh of Sirpatpore) and P.W. 49 (Manohar Singh of Kanchanpore). Their evidence has already been discussed above in connection with the distribution of the leaflet, Ext. I, at Mohiuddinpore and the distribution of the leaflet, Ext. II, at Kanchanpore. We also do not consider their evidence regarding distribution of the booklet to be worthy of reliance. P.W. 35 first stated that Brijnandan was distributing the booklet. Then he changed his statement and said that it was Shiva Yadav, and not Brijnandan, who was distributing the leaflet, R.W. 50, who is resident of Kanchanpore, has, on the other hand, stated in his evidence that there is no person in his village by the name of Shiva Yadav. The petitioner has also failed to show that Shiva Yadav was a polling agent of respondent No. 1. The petitioner's allegation regarding distribution of the booklet at Kanchanpore has not been proved.

PUBLICATION AT NARMA

Brijnandan Singh of Narma, polling agent of respondent No. 1, is said to have distributed the booklet, Ext. III, in that village on 29th May to 6th June 1953. The petitioner's witnesses examined on this point are P.W. 59 and P.W. 84. Their evidence has already been discussed above in relation to the distribution of the leaflet, Ext. I, at Narma by the same persons. We are also not impressed with the evidence of these witnesses about distribution of the booklet. There is also no satisfactory evidence to prove that Brijnandan Singh was a polling agent of respondent No. 1. We hold that the petitioner has not established his case regarding the distribution of the booklet at Narma.

PUBLICATION AT DARIAPORE

Parmanand Misra of Dariapore, polling agent of respondent No. 1, is alleged to have distributed the booklet, Ext. III, in that village on 29th May to 6th June 1953. The petitioner's witnesses on this point are P.W. 32, P.W. 37, P.W. 71, P.W. 74 and P.W. 75. The evidence of P.W. 32, P.W. 37, P.W. 71 and P.W. 75 has already been discussed in connection with the distribution of the leaflet, Ext. I, at Dariapore. We are also unable to accept their evidence regarding distribution of the booklet. P.W. 74 (Ramkirpal Singh) belongs to another village, named Sudiha. He says that he visited Dariapore on 6th June in the evening when he saw Parmanand Misra distributing the booklet. He does not appear to be an independent witness, for, from his evidence, it appears that he had worked for the petitioner not only in the general election but also in the bye-election; he was the polling agent of the petitioner at Parsa polling booth in the bye-election. There is also no satisfactory evidence to prove that Parmanand Misra was a polling agent of respondent No. 1. There is no Polling Agent Form showing his appointment as such. On behalf of the respondent, R.W. 61 and R.W. 63 have deposed that Parmanand Misra was working for the Congress. We, therefore, find that the petitioner has also not succeeded in proving his case so far as the distribution of the booklet at Dariapore is concerned.

PUBLICATION AT BIBIPORE

According to the petitioner's allegation, Kamleshwari Yadav of Bibipore distributed not only the leaflet, Ext. I, but also the booklet, Ext. III, at Bibipore. The leaflet is said to have been distributed on 29th May to 6th June 1953. P.W. 25 and P.W. 57 have spoken about the alleged distribution. Their evidence has already been discussed in connection with the distribution of the leaflet, Ext. I, at Bibipore. We also do not consider their evidence regarding distribution of the booklet at Bibipore to be worthy of reliance. There is also no satisfactory evidence to prove that Kamleshwari Yadav was a polling agent or respondent No. 1. On behalf of the respondent, R.W. 53, who is resident of Bibipore, has stated that any such booklet as Ext. III was not distributed in his village. We have already observed, while dealing with publication of Ext. I at Bibipore, that there are two persons by the name of Kamleshwar or Kamleshwari at Bibipore and from the petitioner's evidence it is not clear that Kamleshwar Prasad Engineer was the distributor, as contended by him.

Upon consideration of the evidence, we find that the petitioner's allegation regarding distribution of the booklet at Bibipore has not been proved.

To sum up, (i) the statements contained in the leaflets, Ext. I and Ext. II, and the booklet, Ext. III, do not come within the purview of section 123(5) of the Act, inasmuch as they are not statements of fact or they do not relate to the personal character or conduct of the petitioner; (ii) the petitioner has failed to prove that the persons named as distributors in the List were polling agents of respondent No. 1; and (iii) the petitioner has also failed to prove that the aforesaid persons distributed the leaflets and the booklet in different villages and on the dates as alleged.

In view of the above findings, the questions, whether the statements were false and whether the alleged distributors of the leaflets and the booklet either believed them to be false or did not believe them to be true, do not arise. The further question, whether the statements were reasonably calculated to prejudice the prospects of the petitioner's election, also does not arise.

This issue is also decided against the petitioner.

Issue No. 5.—This issue is based upon the allegations made in paragraph 12 of the election petition. It is alleged that the election was not a free election by reason of the fact that corrupt practices, contemplated by sections 123(5) and 123(6) of the Act, extensively prevailed at the elections. We have already dealt with those corrupt practices in issues Nos. 3 and 4 and have found that the petitioner has failed to prove his allegations.

It has been contended on behalf of the respondent that the Act contemplates only two grounds upon which the election can be said to be not a free election. Those grounds are set forth in clauses (a) and (b) of section 100(I) of the Act. Clause (a) provides that the election will not be a free election if the corrupt practice of bribery or of undue influence has extensively prevailed at the election. Clause (b) contemplates another ground on which the election will be held not to be a free election, the ground being that coercion or intimidation has been exercised or resorted to by any particular community, group or section on another

community, group or section, to vote or not to vote in any particular way at the election. The consequences of such corrupt practices are drastic; the election has to be declared to be wholly void. In the present case, the petitioner has not alleged the corrupt practice of bribery or of undue influence or the corrupt practice of coercion or intimidation exercised by one particular community, group or section on another community, group or section. It has been, therefore, contended that the facts alleged by the petitioner do not bring the case within the purview of section 100(1), clause (a) or clause (b). We think, this contention is correct.

This issue is also decided against the petitioner.

Issue No. 6.—Respondent No. 1 has alleged in his written statement that he had taken all reasonable means at his disposal for preventing the commission of corrupt or illegal practices at the election. From the evidence on the record it appears that printed instructions had been circulated among the workers and the polling agents of respondent No. 1. Some of the printed leaflets, containing such instructions, are on the record; they are Exts. VI, VI(a) and VI(b). One of the instructions was that there should be no false propaganda. Another instruction was that no illegal act should be committed.

Section 100(3) of the Act provides that, if a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice specified in section 123, but the Tribunal is satisfied, (a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the sanction or connivance, of the candidate or his election agent, (b) that all such corrupt practices were of a trivial and limited character or took the form of customary hospitality which did not affect the result of the election, (c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt or illegal practices at the election, and (d) that in all other respects the election was free from any corrupt or illegal practice on the part of the candidate or any of his agents, then the Tribunal may decide that the election of the returned candidate is not void. In the present case, it has not been shown that respondent No. 1 has been guilty by his polling agents of the corrupt practices as alleged. If this fact had been established, then the question would have arisen whether the respondent can get the benefit of the saving clauses referred to above. It may, however, be mentioned that the returned candidate has to satisfy all the four conditions, given in clauses (a), (b), (c) and (d), before he can ask the Tribunal to hold that his election is not void. The respondent has not satisfied all the conditions. So, we hold that respondent No. 1 cannot get any benefit under section 100(3) of the Act.

Issue No. 7.—In view of our findings on issue No. 2, we hold that the election from the Fatwa constituency is not wholly void.

Issue No. 8.—As neither of the corrupt practices contemplated by issues Nos. 3 and 4 has been established, we hold that the election of respondent No. 1 is not void under section 100(2)(b) of the Act.

It has been urged on behalf of the petitioner that the election of respondent No. 1 is also void under section 100(2)(c) of the Act. Clause (c) of section 100(2) provides, *inter alia*, that the Tribunal shall declare the election of the returned candidate to be void, if it is of the opinion that the result of the election has been materially affected by any non-compliance with the provisions of the Act or of any rules made under the Act. It has been contended that, in this case, there was non-compliance with the provisions of section 40(2) of the Act and rule 11-A of the Rules of 1951. It has been shown, in discussion of issue No. 2 that Brajnandan Singh Yadav was not appointed election agent of respondent No. 2 in the manner prescribed by law and there was, thus, contravention of the provisions of section 40(2) of the Act and rule 11-A of the Rules.

But the petitioner cannot succeed on this ground unless he shows further that the result of the election has been materially affected by such non-compliance with the provisions of the Act and the Rules. It has not been shown that the result of the election has been materially affected by the irregularities in the appointment of the election agent of respondent No. 2. This issue is, therefore, also decided against the petitioner.

The result, therefore, is that the petition fails,

ORDER

The election petition be dismissed. The petitioner shall bear his own costs and shall pay Rs. 750 (Seven hundred and fifty) as cost to the contesting respondent No. 1.

Dated, Patna, the 9th May 1955. (Sd.) BASU PRASAD, *Chairman.*

Revised and corrected by me. (Sd.) HARGOBIND PRASAD SINHA, *Member.*

(Sd.) B. PRASAD, *Chairman.*

(Sd.) ADITYA NARAYAN LAL, *Member.*

[No. 82/16/53/6616.]

By Order,

K. S. RAJAGOPALAN, Asstt. Secy.